

7-2-2010

Hopkins Northwest v. Landscapes Unlimited Clerk's Record v. 5 Dckt. 37170

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LAW CLERK

Vol 5 of 16

(VOLUME 5)

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

HOPKINS NORTHWEST FUND, LLC.,
an Idaho limited liability company,

Plaintiff-Respondent,

-VS-

LANDSCAPES UNLIMITED, LLC.,
a Nebraska limited liability company,

Defendant-Appellant,

And

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S
POINT DEVELOPMENT CORPORATION, an
Idaho corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC., an Idaho limited liability
company; LANCO, INC., an Idaho limited
liability company, ADVANCED CONCRETE
INC., an Idaho corporation; BUILD 4 U, INC.,
an Idaho corporation; KMO, INC., an Idaho
corporation; MATZDORFF RESOURCES, LLC.,
an Idaho limited liability company, d/b/a
MIKE'S SAND & GRAVEL; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

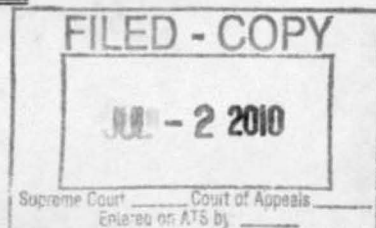
Defendants.

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

Honorable GREGORY M. CULET, District Judge

John R. Goodell
Pocatello, Idaho 83204-1391
Attorney for Appellant

Stephen J. Gledhill
Boise, Idaho 83701
J. Frederick Mack
Boise, Idaho 83701-2527
Attorneys for Respondent



37170

IN THE SUPREME COURT OF THE
STATE OF IDAHO

HOPKINS NORTHWEST FUND, LLC.,
an Idaho limited liability company,

Plaintiff-Respondent,

-vs-

LANDSCAPES UNLIMITED, LLC., a
Nebraska limited liability company,

Defendant-Appellant,

And

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S
POINT DEVELOPMENT CORPORATION, an
Idaho corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC., an Idaho limited liability
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liability company, ADVANCED CONCRETE
INC., an Idaho corporation; BUILD 4 U, INC.,
an Idaho corporation; KMO, INC., an Idaho
corporation; MATZDORFF RESOURCES, LLC.,
an Idaho limited liability company, d/b/a
MIKE'S SAND & GRAVEL; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

Supreme Court No. 37170

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE GREGORY M. CULET, Presiding

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
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Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho
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RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Case No. CV 08-1242-C

**HOPKINS HP RIM PROPERTY,
LLC'S ANSWER TO BUILD 4 U,
INC.'S THIRD PARTY
COMPLAINT**

**HOPKINS HP RIM PROPERTY, LLC'S ANSWER TO BUILD 4 U, INC.'S THIRD
PARTY COMPLAINT - 1**

Hopkins HP Rim Property, LLC ("Hopkins Rim"), as the successor in interest to Edward D. Shank and Grace Shank with respect to the so-called Rim, Lookout Ridge, and Lookout Basin properties, through its attorneys, Holland & Hart LLP, answers Build 4 U, Inc.'s ("Build 4 U") Third Party Complaint by admitting, denying, and alleging as follows.

In answering Build 4 U's Third Party Complaint, Hopkins Rim expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Build 4 U's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins Rim is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Rim is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Build 4 U's Third Party Complaint, and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 31 of Build 4 U's Third Party Complaint, such allegations do not pertain to Hopkins Rim, and, accordingly, no response by Hopkins Rim is required. To the extent that those allegations do require a response by Hopkins Rim, Hopkins Rim is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 32 of Build 4 U's Third Party Complaint, Hopkins Rim incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 31 as if set forth in their entirety herein.

5. Hopkins Rim admits the allegations contained in paragraphs 33 through 34 of Build 4 U's Third Party Complaint.

6. Hopkins Rim denies the allegations contained in paragraphs 35 through 36 of Build 4 U's Third Party Complaint.

7. Hopkins Rim denies the allegations contained in paragraph 37 of Build 4 U's Third Party Complaint.

8. Hopkins Rim denies the allegations contained in paragraph 38 of Build 4 U's Third Party Complaint.

THIRD DEFENSE

9. To the extent Hopkins Rim possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Build 4 U, the lien claimed by Build 4 U is subordinate to the interest of Hopkins Rim.

FOURTH AFFIRMATIVE DEFENSE

10. Build 4 U's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. Build 4 U's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. Build 4 U failed to exercise reasonable diligence to ascertain the interests in the property covered by Build 4 U's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by Build 4 U were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. Build 4 U, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor materials or services allegedly provided by Build 4 U.

NINTH DEFENSE

15. Build 4 U did not perform any labor or services, nor provide any material to any of the land that Hopkins Rim owns and thus Build 4 U is not entitled to any relief sought as against Hopkins Rim.

TENTH DEFENSE

16. Build 4 U acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

ELEVENTH DEFENSE

17. Hopkins Rim has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

18. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Rim is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Build 4 U.

WHEREFORE, Hopkins Rim respectfully requests that this Court enter an order:

- A. Dismissing Build 4 U, Inc.'s Third Party Complaint with prejudice as against Hopkins Rim;
- B. Awarding Hopkins Rim its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Kate R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Rim Property, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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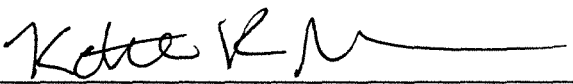
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FILED
A.M. 1:30 P.M.

JAN 08 2009
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Attorneys for Hopkins HP Elk Basin, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho
corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Case No. CV 08-1242-C

**HOPKINS HP ELK BASIN,
LLC'S ANSWER TO LANCO,
INC.'S THIRD PARTY
COMPLAINT**

Hopkins HP Elk Basin, LLC ("Hopkins Elk Basin"), as the assignee to the interest of Schober Family Limited Partnership with respect to the so-called Elk Basin Property, through its attorneys, Holland & Hart LLP, answers Lanco, Inc.'s Third Party Complaint by admitting, denying, and alleging as follows.

In answering Lanco, Inc.'s Third Party Complaint, Hopkins Elk Basin expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Lanco's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins Elk Basin is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Elk Basin is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Lanco's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 54 of Lanco's Third Party Complaint, such allegations do not pertain to Hopkins Elk Basin, and, accordingly, no response by Hopkins Elk Basin is required. To the extent that those allegations do require a response by Hopkins Elk Basin, Hopkins Elk Basin is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 55 of Lanco's Third Party Complaint, Hopkins Elk Basin incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 54 as if set forth in their entirety herein.

5. Hopkins Elk Basin admits the allegations contained in paragraphs 56 through 57 of Lanco's Third Party Complaint.

6. Hopkins Elk Basin denies the allegations contained in paragraphs 58 through 59 of Lanco's Third Party Complaint.

7. Hopkins Elk Basin denies the allegations contained in paragraphs 60 through 61 of Lanco's Third Party Complaint.

THIRD DEFENSE

8. To the extent Hopkins Elk Basin possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Lanco, the lien claimed by Lanco is subordinate to the interest of Hopkins Elk Basin.

FOURTH AFFIRMATIVE DEFENSE

9. Lanco's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

10. Lanco's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

11. Lanco failed to exercise reasonable diligence to ascertain the interests in the property covered by Lanco's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

12. Any damages claimed by Lanco were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

13. Lanco, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Lanco.

NINTH DEFENSE

14. Lanco acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

15. The priority date of Lanco's claim of lien does not relate back to the date Lanco began work on the property that Hopkins Elk Basin has an interest in because the terms of the agreement regarding its services were modified after the alleged work commenced.

ELEVENTH DEFENSE

16. Lanco did not perform any labor or service, nor did it provide any material to any of the land that Hopkins Elk Basin has an interest in and thus Lanco is not entitled to any relief sought as against Hopkins Elk Basin.

TWELFTH DEFENSE

17. The work allegedly performed by Lanco on the land that Hopkins Elk Basin has an interest in was not of a value in the amount Lanco asserts in its lien.

THIRTEENTH DEFENSE

18. Lanco's lien on the land that Hopkins Elk Basin has an interest in is not valid because the alleged work performed by Lanco is not lienable and, if such work is lienable, Lanco

failed to distinguish between the lienable and non-lienable work it allegedly performed on that property.

FOURTEENTH DEFENSE

19. Lanco's mechanics lien is subordinate to the interest of Hopkins Elk Basin because Lanco liened the Development on a blanket basis and did not allocate specific amounts to the parcel(s) in which Hopkins Elk Basin has an interest.

FIFTEENTH DEFENSE

20. Lanco's lien is invalid because it liened the entire Development on a blanket basis even though the Development consists of many separate parcels of land. Lanco was obligated to allocate the amount of the lien among the different parcels of land.

SIXTEENTH DEFENSE

21. Lanco's lien is invalid because it filed a blanket lien against property owned by different owners and Lanco failed to allocate the amount of the lien among the property owned by the different owners. Even if Lanco lien is valid, it is subordinate to the interest of Hopkins Elk Basin.

SEVENTEENTH DEFENSE

22. Hopkins Elk Basin has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

23. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Elk Basin is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Lanco.

WHEREFORE, Hopkins Elk Basin respectfully requests that this Court enter an order:

- A. Dismissing Lanco, Inc.'s Third Party Complaint with prejudice as against Hopkins Elk Basin;
- B. Awarding Hopkins Elk Basin its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Katelyn R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Elk Basin, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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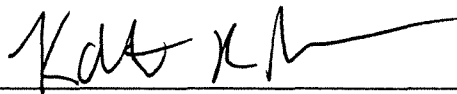
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

Case No. CV 08-1242-C

**HOPKINS HP SCHMIDT, LLC'S
ANSWER TO KMO, INC.'S
THIRD PARTY COMPLAINT**

**HOPKINS HP SCHMIDT, LLC'S ANSWER TO KMO, INC.'S THIRD PARTY
COMPLAINT- 1**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP Schmidt, LLC ("Hopkins Schmidt"), as assignee to the interest of Bank of the Cascades with respect to the so-called central parcel 5/pan down and 9.56 acres of schmidt/east parcel 5/pan up properties, through its attorneys, Holland & Hart LLP, answers KMO, Inc.'s ("KMO") Third Party Complaint by admitting, denying, and alleging as follows.

In answering KMO's Third Party Complaint, Hopkins Schmidt expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. KMO's Complaint fails to state a claim upon which relief can be granted.

Hopkins Schmidt is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Schmidt is without knowledge or information sufficient to form a belief regarding most of the allegations contained in KMO's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 18 of KMO's Third Party Complaint, Hopkins Schmidt believes that such allegations do not pertain to it because those allegations constitute KMO's answer to Plaintiff's Complaint, and, accordingly, no response by Hopkins Schmidt is required. To the extent that those allegations do require a response by Hopkins

Schmidt, Hopkins Schmidt is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. With respect to paragraphs 19 through 56 of KMO's Third Party Complaint, such allegations do not pertain to Hopkins Schmidt, and, accordingly, no response by Hopkins Schmidt is required. To the extent that those allegations do require a response by Hopkins Schmidt, Hopkins Schmidt is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the

5. Answering paragraph 57 of KMO's Third Party Complaint, Hopkins Schmidt incorporates by reference each and every response to every allegation set forth in paragraphs 19 through 56 as if set forth in their entirety herein.

6. Hopkins Schmidt admits the allegations contained in paragraphs 58 through 59 of KMO's Third Party Complaint.

7. Hopkins Schmidt denies the allegations contained in paragraphs 60 through 61 of KMO's Third Party Complaint.

8. Hopkins Schmidt denies the allegations contained in paragraphs 62 through 63 of KMO's Third Party Complaint.

THIRD DEFENSE

9. To the extent Hopkins Schmidt possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by KMO, the lien claimed by KMO is subordinate to the interest of Hopkins Schmidt.

FOURTH AFFIRMATIVE DEFENSE

10. KMO's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. KMO's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. KMO failed to exercise reasonable diligence to ascertain the interests in the property covered by KMO's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by KMO were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. KMO, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by KMO.

NINTH DEFENSE

15. KMO did not perform any labor or service, nor provide material to any of the land that Hopkins Schmidt has a security interest in and thus KMO is not entitled to any relief sought as against Hopkins Schmidt.

TENTH AFFIRMATIVE DEFENSE

16. KMO acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

ELEVENTH DEFENSE

17. Hopkins Schmidt has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES


18. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Schmidt is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by KMO

WHEREFORE, Hopkins Schmidt respectfully requests that this Court enter an order

- A. Dismissing KMO, Inc.'s Third Party Complaint with prejudice as to Hopkins Schmidt;
- B. Awarding Hopkins Schmidt its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By 
Katelyn R. McKinney, of the firm
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CERTIFICATE OF SERVICE

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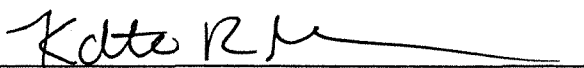
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

Case No. CV 08-1242-C

**HOPKINS HP SCHMIDT, LLC'S
ANSWER TO BUILD 4 U, INC.'S
THIRD PARTY COMPLAINT**

**HOPKINS HP SCHMIDT, LLC'S ANSWER TO BUILD 4 U, INC.'S THIRD PARTY
COMPLAINT - 1**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP Schmidt, LLC ("Hopkins Schmidt"), as assignee to the interest of Bank of the Cascades with respect to the so-called central parcel 5/pan down and 9.56 acres of schmidt/east parcel 5/pan up properties, through its attorneys, Holland & Hart LLP, answers Build 4 U, Inc.'s (Build 4 U") Third Party Complaint by admitting, denying, and alleging as follows.

In answering Build 4 U's Third Party Complaint, Hopkins Schmidt expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Build 4 U's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins Schmidt is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Schmidt is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Build 4 U's Third Party Complaint, and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 31 of Build 4 U's Third Party Complaint, such allegations do not pertain to Hopkins Schmidt, and, accordingly, no response by Hopkins Schmidt is required. To the extent that those allegations do require a response by Hopkins

Schmidt, Hopkins Schmidt is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 32 of Build 4 U's Third Party Complaint, Hopkins Schmidt incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 31 as if set forth in their entirety herein.

5. Hopkins Schmidt admits the allegations contained in paragraphs 33 through 34 of Build 4 U's Third Party Complaint.

6. Hopkins Schmidt denies the allegations contained in paragraphs 35 through 36 of Build 4 U's Third Party Complaint.

7. Hopkins Schmidt denies the allegations contained in paragraph 37 of Build 4 U's Third Party Complaint.

8. Hopkins Schmidt denies the allegations contained in paragraph 38 of Build 4 U's Third Party Complaint.

THIRD DEFENSE

9. To the extent Hopkins Schmidt possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Build 4 U, the lien claimed by Build 4 U is subordinate to the interest of Hopkins Schmidt.

FOURTH AFFIRMATIVE DEFENSE

10. Build 4 U's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. Build 4 U's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. Build 4 U failed to exercise reasonable diligence to ascertain the interests in the property covered by Build 4 U's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by Build 4 U were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. Build 4 U, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor materials or services allegedly provided by Build 4 U.

NINTH DEFENSE

15. Build 4 U did not perform any labor or services, nor provide any material to any of the land that Hopkins Schmidt has an interest in and thus Build 4 U is not entitled to any relief sought as against Hopkins Schmidt.

TENTH DEFENSE

16. Build 4 U acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

ELEVENTH DEFENSE

17. Hopkins Schmidt has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

18. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Schmidt is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Build 4 U.

WHEREFORE, Hopkins Schmidt respectfully requests that this Court enter an order:

- A. Dismissing Build 4 U, Inc.'s Third Party Complaint with prejudice as against Hopkins Schmidt;
- B. Awarding Hopkins Schmidt its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Katelyn R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Schmidt, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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Attorneys for Hopkins HP Rim Property, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho
corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Case No. CV 08-1242-C

**HOPKINS HP RIM PROPERTY,
LLC'S ANSWER TO LANCO,
INC.'S THIRD PARTY
COMPLAINT**

Hopkins HP Rim Property, LLC ("Hopkins Rim"), as the successor in interest to Edward D. Shank and Grace Shank with respect to the so-called Rim, Lookout Ridge, and Lookout Basin properties, through its attorneys, Holland & Hart LLP, answers Lanco, Inc.'s Third Party Complaint by admitting, denying, and alleging as follows.

In answering Lanco, Inc.'s Third Party Complaint, Hopkins Elk expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Lanco's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins Rim is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Rim is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Lanco's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 54 of Lanco's Third Party Complaint, such allegations do not pertain to Hopkins Rim, and, accordingly, no response by Hopkins Rim is required. To the extent that those allegations do require a response by Hopkins Rim, Hopkins Rim is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 55 of Lanco's Third Party Complaint, Hopkins Rim incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 54 as if set forth in their entirety herein.

5. Hopkins Rim admits the allegations contained in paragraphs 56 through 57 of Lanco's Third Party Complaint.

6. Hopkins Rim denies the allegations contained in paragraphs 58 through 59 of Lanco's Third Party Complaint.

7. Hopkins Rim denies the allegations contained in paragraphs 60 through 61 of Lanco's Third Party Complaint.

THIRD DEFENSE

8. To the extent Hopkins Rim possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Lanco, the lien claimed by Lanco is subordinate to the interest of Hopkins Rim.

FOURTH AFFIRMATIVE DEFENSE

9. Lanco's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

10. Lanco's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

11. Lanco failed to exercise reasonable diligence to ascertain the interests in the property covered by Lanco's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

12. Any damages claimed by Lanco were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

13. Lanco, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Lanco.

NINTH DEFENSE

14. Lanco acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

15. The priority date of Lanco's claim of lien does not relate back to the date Lanco began work on the property that Hopkins Rim owns because the terms of the agreement regarding its services were modified after the alleged work commenced.

ELEVENTH DEFENSE

16. Lanco did not perform any labor or service, nor did it provide any material to any of the land that Hopkins Rim owns and thus Lanco is not entitled to any relief sought as against Hopkins Rim.

TWELFTH DEFENSE

17. The work allegedly performed by Lanco on the land that Hopkins Rim owns was not of a value in the amount Lanco asserts in its lien.

THIRTEENTH DEFENSE

18. Lanco's lien on the land that Hopkins Rim owns is invalid because the alleged work performed by Lanco is not lienable and, if such work is lienable, Lanco failed to distinguish between the lienable and non-lienable work it allegedly performed on that property.

FOURTEENTH DEFENSE

19. Lanco's lien is subordinate to the interest of Hopkins Rim's interest because Lanco liened the Development on a blanket basis and did not allocate specific amounts to the parcel(s) in which Hopkins Rim has an interest.

FIFTEENTH DEFENSE

20. Lanco's lien is invalid because it liened the entire Development on a blanket basis even though the Development consists of many separate parcels of land. Lanco was obligated to allocate the amount of the lien among the different parcels of land.

SIXTEENTH DEFENSE

21. Lanco's lien is invalid because it filed a blanket lien against property owned by different owners and Lanco failed to allocate the amount of the lien among the property owned by the different owners. Even if Lanco's lien is valid, it is subordinate to the interest of Hopkins Rim.

SEVENTEENTH DEFENSE

22. Hopkins Rim has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

23. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Rim is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Lanco.

WHEREFORE, Hopkins Rim respectfully requests that this Court enter an order:

- A. Dismissing Lanco, Inc.'s Third Party Complaint with prejudice as against Hopkins Rim;
- B. Awarding Hopkins Rim its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Kate R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Rim Property, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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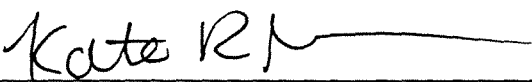
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

Case No. CV 08-1242-C

**HOPKINS HP SCHIMDT, LLC'S
ANSWER TO MASON AND
STANFIELD, INC.'S CROSS
CLAIM**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP Schmidt, LLC ("Hopkins Schmidt"), as assignees to the interest of Bank of the Cascades with respect to the so-called central parcel 5/pan down and 9.56 acres of schmidt/east parcel 5/pan up properties, through its attorneys, Holland & Hart LLP, answers Mason and Stanfield Inc.'s ("Mason and Stanfield") Cross-Claim Complaint by admitting, denying, and alleging as follows.

In answering Mason and Stanfield's Cross-Claim Complaint, Hopkins Schmidt expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Mason and Stanfield's Cross-Claim Complaint fails to state a claim upon which relief can be granted. Hopkins Schmidt is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Schmidt is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Mason and Stanfield's Cross-Claim Complaint, and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs I through IV of Mason and Stanfield's Cross-Claim Complaint, Hopkins Schmidt believes that such allegations do not pertain to it because those allegations constitute Mason and Stanfield's answer to Plaintiff's Complaint, and, accordingly, no response by Hopkins Schmidt is required. To the extent that those allegations do require a response by Hopkins Schmidt, Hopkins Schmidt is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. With respect to paragraphs V through LVI of Mason and Stanfield's Cross-Claim Complaint, such allegations do not pertain to Hopkins Schmidt, and, accordingly, no response by Hopkins Schmidt is required. To the extent that those allegations do require a response by Hopkins Schmidt, Hopkins Schmidt is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

5. Answering paragraph LVII of Mason and Stanfield's Cross-Claim Complaint, Hopkins Schmidt incorporates by reference each and every response to every allegation set forth in paragraphs I through LVI as if set forth in their entirety herein.

6. Hopkins Schmidt admits the allegations contained in paragraphs LVIII through LIX of Mason and Stanfield's Cross-Claim Complaint.

7. Hopkins Schmidt denies the allegations contained in paragraphs LX through LXI of Mason and Stanfield's Cross-Claim Complaint.

8. Hopkins Schmidt denies the allegations contained in paragraph LXII of Mason and Stanfield's Cross-Claim Complaint.

THIRD DEFENSE

9. To the extent Hopkins Schmidt possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Mason and Stanfield, the lien claimed by Mason and Stanfield is subordinate to the interest of Hopkins Schmidt.

FOURTH AFFIRMATIVE DEFENSE

10. Mason and Stanfield's Cross-Claim Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. Mason and Stanfield's Cross-Claim Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. Mason and Stanfield failed to exercise reasonable diligence to ascertain the interests in the property covered by Mason and Stanfield's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by Mason and Stanfield were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. Mason and Stanfield, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Mason and Stanfield.

NINTH AFFIRMATIVE DEFENSE

15. Mason and Stanfield acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

16. Mason and Stanfield's lien is subordinate to the interest of Hopkins Schmidt's deeds of trust because Mason and Stanfield liened the Development on a blanket basis and did not allocated specific amounts to the parcel(s) in which Hopkins Schmidt has a secured interest.

ELEVENTH DEFENSE

17. Mason and Stanfield's lien is invalid because it liened the entire Development on a blanket basis even though the Development consists of many separate parcels of land. Mason and Stanfield was obligated to allocate the amount of the lien among the different parcels of land.

TWELFTH DEFENSE

18. Mason and Stanfield's lien is invalid because it filed a blanket lien against property owned by different owners and Mason and Stanfield failed to allocate the amount of the lien among the property owned by the different owners.

THIRTEENTH DEFENSE

19. Mason and Stanfield's lien is invalid because it failed to serve notice of this action on Jeannette Bullock, who owned much of the land subject to its lien.

FOURTEENTH DEFENSE

20. Hopkins Schmidt has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

21. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Schmidt is entitled to recover its attorney fees and costs in defending the Cross-Claim Complaint filed by Mason and Stanfield

WHEREFORE, Hopkins Schmidt respectfully requests that this Court enter an order:

- A. Dismissing Mason and Stanfield's Cross-Claim Complaint with prejudice as against Hopkins Schmidt;
- B. Awarding Hopkins Schmidt its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Katelyn R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Schmidt, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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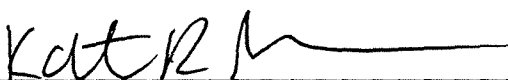
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Attorneys for Hopkins HP North Slope, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

FILED
A.M. 1:30 P.M.

JAN 08 2009

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

Case No. CV 08-1242-C

**HOPKINS HP NORTH SLOPE,
LLC'S ANSWER TO KMO,
INC.'S THIRD PARTY
COMPLAINT**

**HOPKINS HP NORTH SLOPE, LLC'S ANSWER TO KMO, INC.'S THIRD PARTY
COMPLAINT- 1**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP North Slope, LLC ("Hopkins North Slope"), as assignees to the interest of the Bank of the Cascades with respect to the so-called North Slope property, through its attorneys, Holland & Hart LLP, answers KMO, Inc.'s ("KMO") Third Party Complaint by admitting, denying, and alleging as follows.

In answering KMO's Third Party Complaint, Hopkins North Slope expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. KMO's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins North Slope is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins North Slope is without knowledge or information sufficient to form a belief regarding most of the allegations contained in KMO's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 18 of KMO's Third Party Complaint, Hopkins North Slope believes that such allegations do not pertain to it because those allegations

constitute KMO's answer to Plaintiff's Complaint, and, accordingly, no response by Hopkins North Slope is required. To the extent that those allegations require a response by Hopkins North Slope, Hopkins North Slope is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. With respect to paragraphs 19 through 56 of KMO's Third Party Complaint, such allegations do not pertain to Hopkins North Slope, and, accordingly, no response by Hopkins North Slope is required. To the extent that those allegations do require a response from Hopkins North Slope, Hopkins North Slope is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

5. Answering paragraph 57 of KMO's Third Party Complaint, Hopkins North Slope incorporates by reference each and every response to every allegation set forth in paragraphs 19 through 56 as if set forth in their entirety herein.

6. Hopkins North Slope admits the allegations contained in paragraphs 58 through 59 of KMO's Third Party Complaint.

7. Hopkins North Slope denies the allegations contained in paragraphs 60 through 61 of KMO's Third Party Complaint.

8. Hopkins North Slope denies the allegations contained in paragraphs 62 through 63 of KMO's Third Party Complaint.

THIRD DEFENSE

9. To the extent Hopkins North Slope possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by KMO, the lien claimed by KMO is subordinate to the interest of Hopkins North Slope.

FOURTH AFFIRMATIVE DEFENSE

10. KMO's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. KMO's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. KMO failed to exercise reasonable diligence to ascertain the interests in the property covered by KMO's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by KMO were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. KMO, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien, to provide any labor, materials, or services, nor did the property owners otherwise consent to the labor, materials, or services allegedly provided by KMO.

NINTH DEFENSE

15. KMO acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

16. KMO did not perform any labor or services, nor provide material to any of the land that Hopkins North Slope has a security interest in and thus KMO is not entitled to any relief sought as against Hopkins North Slope.

ELEVENTH DEFENSE

17. Hopkins North Slope has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

18. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins North Slope is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by KMO.

WHEREFORE, Hopkins North Slope respectfully requests that this Court enter an order:

- A. Dismissing KMO, Inc.'s Third Party Complaint with prejudice as against Hopkins North Slope;
- B. Awarding Hopkins North Slope its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 21st day of January, 2009.

HOLLAND & HART LLP

By Kat R McKinney
Katelyn R. McKinney, of the firm
Attorneys for Hopkins HP North Slope, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

FILED
A.M. 1:37 P.M.

JAN 08 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Case No. CV 08-1242-C

**HOPKINS HP NORTH SLOPE,
LLC'S ANSWER TO LANCO,
INC.'S, THIRD PARTY
COMPLAINT**

**HOPKINS HP NORTH SLOPE, LLC'S ANSWER TO LANCO, INC.'S THIRD PARTY
COMPLAINT- 1**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP North Slope, LLC ("Hopkins North Slope"), as assignees to the interest of the Bank of the Cascades with respect to the so-called North Slope property, through its attorneys, Holland & Hart LLP, answers Lanco, Inc.'s Third Party Complaint by admitting, denying, and alleging as follows.

In answering Lanco, Inc.'s Third Party Complaint, Hopkins North Slope expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Lanco's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins North Slope is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins North Slope is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Lanco's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 54 of Lanco's Third Party Complaint, such allegations do not pertain to Hopkins North Slope, and, accordingly, no response by Hopkins

North Slope is required. To the extent that those allegations do require a response by Hopkins North Slope, Hopkins North Slope is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 55 of Lanco's Third Party Complaint, Hopkins North Slope incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 54 as if set forth in their entirety herein.

5. Hopkins North Slope admits the allegations contained in paragraphs 56 through 57 of Lanco's Third Party Complaint.

6. Hopkins North Slope denies the allegations contained in paragraphs 58 through 59 of Lanco's Third Party Complaint.

7. Hopkins North Slope denies the allegations contained in paragraphs 60 through 61 of Lanco's Third Party Complaint.

THIRD DEFENSE

8. To the extent Hopkins North Slope possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Lanco, the lien claimed by Lanco is subordinate to the interest of Hopkins North Slope.

FOURTH AFFIRMATIVE DEFENSE

9. Lanco's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

10. Lanco's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

11. Lanco failed to exercise reasonable diligence to ascertain the interests in the property covered by Lanco's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

12. Any damages claimed by Lanco were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

13. Lanco, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Lanco.

NINTH DEFENSE

14. Lanco acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

15. The priority date of Lanco's claim of lien does not relate back to the date Lanco began work on the property that Hopkins North Slope has a secured interest in because the terms of the agreement regarding its services were modified after the alleged work commenced.

ELEVENTH DEFENSE

16. Lanco did not perform any labor or service, nor did it provide any material to any of the land that Hopkins North Slope has a security interest in and thus Lanco is not entitled to any relief sought as against Hopkins North Slope.

TWELFTH DEFENSE

17. The work allegedly performed by Lanco on the land that Hopkins North Slope has a security interest in was not of a value in the amount Lanco asserts in its lien.

THIRTEENTH DEFENSE

18. Lanco's lien on the land that Hopkins North Slope has a security interest in is invalid because the alleged work performed by Lanco is not lienable and, if such work is lienable, Lanco failed to distinguish between the lienable and non-lienable work it allegedly performed on that property.

FOURTEENTH DEFENSE

19. If Lanco's lien is valid, it is only entitled to recover the amount of the lien allocated specifically in the lien as against the security interest held by Hopkins North Slope.

FIFTEENTH DEFENSE

20. Hopkins North Slope has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

21. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins North Slope is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Lanco.

WHEREFORE, Hopkins North Slope respectfully requests that this Court enter an order:

- A. Dismissing Lanco, Inc.'s Third Party Complaint with prejudice as against Hopkins North Slope;
- B. Awarding Hopkins North Slope its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Katelyn R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP North Slope, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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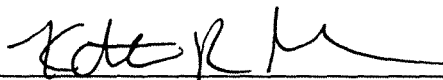
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FILED
A.M. 4:30 P.M.

JAN 08 2009

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Attorneys for Hopkins HP Rim Property, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho
corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Case No. CV 08-1242-C

**HOPKINS HP RIM PROPERTY,
LLC'S ANSWER TO MASON
AND STANFIELD, INC.'S
CROSS-CLAIM**

**HOPKINS HP RIM PROPERTY, LLC'S ANSWER TO MASON AND STANFIELD,
INC.'S CROSS-CLAIM - 1**

Hopkins HP Rim Property, LLC ("Hopkins Rim"), as the successor in interest to Edward D. Shank and Grace Shank with respect to the so-called Rim, Lookout Ridge, and Lookout Basin properties, through its attorneys, Holland & Hart LLP, answers Mason and Stanfield Inc.'s ("Mason and Stanfield") Cross-Claim Complaint by admitting, denying, and alleging as follows.

In answering Mason and Stanfield's Cross-Claim Complaint, Hopkins Rim expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Mason and Stanfield's Counterclaim and Cross-Claim Complaint fails to state a claim upon which relief can be granted. Hopkins Rim is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Rim is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Mason and Stanfield's Cross-Claim Complaint, and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs I through IV of Mason and Stanfield's Cross-Claim Complaint, Hopkins Rim believes that such allegations do not pertain to it because those allegations constitute Mason and Stanfield's answer to Plaintiff's Complaint, and, accordingly, no response by Hopkins Rim is required. To the extent that those allegations do require a response by Hopkins Rim, Hopkins Rim is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. With respect to paragraphs V through LVI of Mason and Stanfield's Cross-Claim Complaint, such allegations do not pertain to Hopkins Rim, and, accordingly, no response by Hopkins Rim is required. To the extent that those allegations do require a response by Hopkins Rim, Hopkins Rim is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

5. Answering paragraph LVII of Mason and Stanfield's Cross-Claim Complaint, Hopkins Rim incorporates by reference each and every response to every allegation set forth in paragraphs I through LVII as if set forth in their entirety herein.

6. Hopkins Rim admits the allegations contained in paragraphs LVIII through LIX of Mason and Stanfield's Cross-Claim Complaint.

7. Hopkins Rim denies the allegations contained in paragraphs LX through LXI of Mason and Stanfield's Cross-Claim Complaint.

8. Hopkins Rim denies the allegations contained in paragraph LXII of Mason and Stanfield's Cross-Claim Complaint.

THIRD DEFENSE

9. To the extent Hopkins Rim possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Mason and Stanfield, the lien claimed by Mason and Stanfield is subordinate to the interest of Hopkins Rim.

FOURTH AFFIRMATIVE DEFENSE

10. Mason and Stanfield's Counterclaim and Cross-Claim Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. Mason and Stanfield's Cross-Claim Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. Mason and Stanfield failed to exercise reasonable diligence to ascertain the interests in the property covered by Mason and Stanfield's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by Mason and Stanfield were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. Mason and Stanfield, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Mason and Stanfield.

NINTH AFFIRMATIVE DEFENSE

15. Mason and Stanfield acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

16. Mason and Stanfield's lien is invalid because it liened the entire Development on a blanket basis even though the Development consists of many separate parcels of land. Mason

and Stanfield was obligated to allocate the amount of the lien among the different parcels of land.

ELEVENTH DEFENSE

17. Mason and Stanfield's mechanics lien is invalid because it filed a blanket lien against property owned by different owners and Mason and Stanfield failed to allocate the amount of the lien among the property owned by the different owners.

TWELFTH DEFENSE

18. Mason and Stanfield's lien is invalid because it failed to serve notice of this action on Jeannette Bullock, who owned much of the land subject to its lien.

THIRTEENTH DEFENSE

19. Hopkins Rim has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

20. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Rim is entitled to recover its attorney fees and costs in defending the Cross-Claim Complaint filed by Mason and Stanfield.

WHEREFORE, Hopkins Rim respectfully requests that this Court enter an order:

- A. Dismissing Mason and Stanfield's Cross-Claim with prejudice as against Hopkins Rim;
- B. Awarding Hopkins Rim its attorney fees and costs incurred in defending this action; and

C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Kat R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Rim Property, LLC

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I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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FILED
A.M. 1:30 P.M.

JAN 08 2009

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Attorneys for Hopkins HP Elk Basin, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho
corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Case No. CV 08-1242-C

**HOPKINS HP ELK BASIN,
LLC'S ANSWER TO KMO,
INC.'S THIRD PARTY
COMPLAINT**

Hopkins HP Elk Basin, LLC ("Hopkins Elk Basin"), as the assignee to the interest of Schober Family Limited Partnership with respect to the so-called Elk Basin Property, through its attorneys, Holland & Hart LLP, answers KMO, Inc.'s ("KMO") Third Party Complaint by admitting, denying, and alleging as follows.

In answering KMO's Third Party Complaint, Hopkins Elk Basin expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. KMO's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins Elk Basin is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Elk Basin is without knowledge or information sufficient to form a belief regarding most of the allegations contained in KMO's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 18 of KMO's Third Party Complaint, Hopkins Elk Basin believes that such allegations do not pertain to it because those allegations constitute KMO's answer to Plaintiff's Complaint, and, accordingly, no response by Hopkins Elk Basin is required. To the extent that those allegations do require a response by Hopkins Elk Basin, Hopkins Elk Basin is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. With respect to paragraphs 19 through 56 of KMO's Third Party Complaint, such allegations do not pertain to Hopkins Elk Basin, and, accordingly, no response by Hopkins Elk Basin is required. To the extent that those allegations do require a response by Hopkins Elk

Basin, Hopkins Elk Basin is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

5. Answering paragraph 57 of KMO's Third Party Complaint, Hopkins Elk Basin incorporates by reference each and every response to every allegation set forth in paragraphs 19 through 56 as if set forth in their entirety herein.

6. Hopkins Elk Basin admits the allegations contained in paragraphs 58 through 59 of KMO's Third Party Complaint.

7. Hopkins Elk Basin denies the allegations contained in paragraphs 60 through 61 of KMO's Third Party Complaint.

8. Hopkins Elk Basin denies the allegations contained in paragraphs 62 through 63 of KMO's Third Party Complaint.

THIRD DEFENSE

9. To the extent that Hopkins Elk Basin possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by KMO, the lien claimed by KMO is subordinate to the interest of Hopkins Elk Basin.

FOURTH AFFIRMATIVE DEFENSE

10. KMO's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. KMO's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. KMO failed to exercise reasonable diligence to ascertain the interests in the property covered by KMO's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by KMO were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. KMO, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials, or services allegedly provided by KMO.

NINTH DEFENSE

15. KMO acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

16. KMO did not perform any labor or service, nor provide material to any of the lands Hopkins Elk Basin has an interest in and thus KMO is not entitled to any relief sought as against Hopkins Elk Basin.

ELEVENTH DEFENSE

17. Hopkins Elk Basin has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

18. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Elk Basin is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by KMO.

WHEREFORE, Hopkins Elk Basin respectfully requests that this Court enter an order:

- A. Dismissing KMO, Inc.'s Third Party Complaint with prejudice as against Hopkins Elk Basin;
- B. Awarding Hopkins Elk Basin its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Katlyn R. McKinney
Katelyn R. McKinney, of the firm
Attorneys for Hopkins HP Elk Basin, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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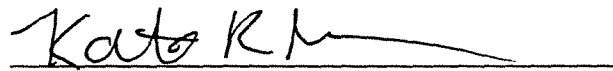
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FILED
A.M. 4:50 P.M.

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

Case No. CV 08-1242-C

**HOPKINS HP NORTH SLOPE,
LLC'S ANSWER TO MASON
AND STANFIELD, INC.'S,
CROSS-CLAIM**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMP, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP North Slope, LLC ("Hopkins North Slope"), as assignees to the interest of the Bank of the Cascades with respect to the so-called North Slope property, through its attorneys, Holland & Hart LLP, answers Mason and Stanfield Inc.'s ("Mason and Stanfield") Cross-Claim Complaint by admitting, denying, and alleging as follows.

In answering Mason and Stanfield's Cross-Claim Complaint, Hopkins North Slope expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Mason and Stanfield's Cross-Claim Complaint fails to state a claim upon which relief can be granted. Hopkins North Slope is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins North Slope is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Mason and Stanfield's Cross-Claim Complaint, and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs I through IV of Mason and Stanfield's Cross-Claim Complaint, Hopkins North Slope believes that such allegations do not pertain to it because those allegations constitute Mason and Stanfield's answer to Plaintiff's Complaint, and, accordingly, no response by Hopkins North Slope is required. To the extent that those allegations do require a response by Hopkins North Slope, Hopkins North Slope is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. With respect to paragraphs V through LVI of Mason and Stanfield's Cross-Claim Complaint, such allegations do not pertain to Hopkins North Slope, and, accordingly, no response by Hopkins North Slope is required. To the extent that those allegations do require a response by Hopkins North Slope, Hopkins North Slope is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

5. Answering paragraph LVII of Mason and Stanfield's Cross-Claim Complaint, Hopkins North Slope incorporates by reference each and every response to every allegation set forth in paragraphs I through LVI as if set forth in their entirety herein.

6. Hopkins North Slope admits the allegations contained in paragraphs LVIII through LIX of Mason and Stanfield's Cross-Claim Complaint.

7. Hopkins North Slope denies the allegations contained in paragraphs LX through LXI of Mason and Stanfield's Cross-Claim Complaint.

8. Hopkins North Slope denies the allegations contained in paragraph LXII of Mason and Stanfield's Cross-Claim Complaint.

THIRD DEFENSE

9. To the extent Hopkins North Slope possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Mason and Stanfield, the lien claimed by Mason and Stanfield is subordinate to the interest of Hopkins North Slope.

FOURTH AFFIRMATIVE DEFENSE

10. Mason and Stanfield's Cross-Claim Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. Mason and Stanfield's Cross-Claim Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. Mason and Stanfield failed to exercise reasonable diligence to ascertain the interests in the property covered by Mason and Stanfield's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by Mason and Stanfield were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. Mason and Stanfield, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Mason and Stanfield.

NINTH AFFIRMATIVE DEFENSE

15. Mason and Stanfield acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

16. Mason and Stanfield's lien is subordinate to the interest of Hopkins North Slope's deeds of trust because Mason and Stanfield liened the Development on a blanket basis and did not allocated specific amounts to the parcel(s) in which Hopkins North Slope has a secured interest.

ELEVENTH DEFENSE

17. Mason and Stanfield's lien is invalid because it liened the entire Development on a blanket basis even though the Development consists of many separate parcels of land. Mason and Stanfield was obligated to allocate the amount of the lien among the different parcels of land.

TWELFTH DEFENSE

18. Mason and Stanfield's lien is invalid because it filed a blanket lien against property owned by different owners and Mason and Stanfield failed to allocate the amount of the lien among the property owned by the different owners.

THIRTEENTH DEFENSE

19. Mason and Stanfield's lien is invalid because it failed to serve notice of this action on Jeannette Bullock, who owned much of the land subject to its lien.

FOURTEENTH DEFENSE

20. Hopkins North Slope has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

21. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins North Slope is entitled to recover its attorney fees and costs in defending the Cross-Claim Complaint filed by Mason and Stanfield.

WHEREFORE, Hopkins North Slope respectfully requests that this Court enter an order:

- A. Dismissing Mason and Stanfield's Cross-Claim Complaint with prejudice as against Hopkins North Slope;
- B. Awarding Hopkins North Slope its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Kat R McKinney
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Attorneys for Hopkins HP North Slope, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebrasks limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

Case No. CV 08-1242-C

**HOPKINS HP NORTH SLOPE,
LLC'S ANSWER TO BUILD 4 U
THIRD PARTY COMPLAINT**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP North Slope, LLC ("Hopkins North Slope"), as assignees to the interest of the Bank of the Cascades with respect to the so-called North Slope property, through its attorneys, Holland & Hart LLP, answers Build 4 U, Inc.'s (Build 4 U") Third Party Complaint by admitting, denying, and alleging as follows.

In answering Build 4 U's Third Party Complaint, Hopkins North Slope expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Build 4 U's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins North Slope is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins North Slope is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Build 4 U's Third Party Complaint, and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 31 of Build 4 U's Third Party Complaint, such allegations do not pertain to Hopkins North Slope, and, accordingly, no response by

Hopkins North Slope is required. To the extent that those allegations do require a response by Hopkins North Slope, Hopkins North Slope is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 32 of Build 4 U's Third Party Complaint, Hopkins North Slope incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 31 as if set forth in their entirety herein.

5. Hopkins North Slope admits the allegations contained in paragraphs 33 through 34 of Build 4 U's Third Party Complaint.

6. Hopkins North Slope denies the allegations contained in paragraphs 35 through 36 of Build 4 U's Third Party Complaint.

7. Hopkins North Slope denies the allegations contained in paragraph 37 of Build 4 U's Third Party Complaint.

8. Hopkins North Slope denies the allegations contained in paragraph 38 of Build 4 U's Third Party Complaint.

THIRD DEFENSE

9. To the extent Hopkins North Slope possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Build 4 U, the lien claimed by Build 4 U is subordinate to the interest of Hopkins North Slope.

FOURTH AFFIRMATIVE DEFENSE

10. Build 4 U's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

11. Build 4 U's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

12. Build 4 U failed to exercise reasonable diligence to ascertain the interests in the property covered by Build 4 U's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

13. Any damages claimed by Build 4 U were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

14. Build 4 U, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor materials or services allegedly provided by Build 4 U.

NINTH DEFENSE

15. Build 4 U did not perform any labor or services, nor provide any material to any of the land that Hopkins North Slope has a security interest in and thus Build 4 U is not entitled to any relief sought as against Hopkins North Slope.

TENTH DEFENSE

16. Build 4 U acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

ELEVENTH DEFENSE

17. Hopkins North Slope has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

18. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins North Slope is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Build 4 U.

WHEREFORE, Hopkins North Slope respectfully requests that this Court enter an order:

- A. Dismissing Build 4 U, Inc.'s Third Party Complaint with prejudice as against Hopkins North Slope;
- B. Awarding Hopkins North Slope its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Katelyn R. McKinney
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP North Slope, LLC

CERTIFICATE OF SERVICE

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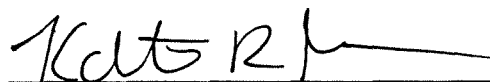
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an Idaho
limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S POINT
DEVELOPMENT CORPORATION, an Idaho
corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C., a
Nebraskas limited liability company; LANCO, INC., an
Idaho corporation; RICHARD DINES; BEUS
EXCAVATION, LLC, an Idaho limited liability
company; ADVANCED CONCRETE, INC., an Idaho

FILED
A.M. 1:30 P.M.

JAN 08 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Case No. CV 08-1242-C

**HOPKINS HP SCHMIDT, LLC'S
ANSWER TO LANCO, INC.'S
THIRD PARTY COMPLAINT**

**HOPKINS HP SCHMIDT, LLC'S ANSWER TO LANCO, INC.'S THIRD PARTY
COMPLAINT - 1**

corporation; BUILD 4 U, INC., an Idaho corporation;
KMO, INC., an Idaho corporation; MATZDORFF
RESOURCES, LLC, an Idaho limited liability company,
d/b/a/ Mike's Sand & Gravel; and THE CITY OF
NAMPA, IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Hopkins HP Schimdt, LLC ("Hopkins Schmidt"), as assignee to the interest of Bank of Cascades with respect to the so-called central parcel 5/pan down and 9.56 acres of schmidt/east parcel 5/pan up properties, through its attorneys, Holland & Hart LLP, answers Lanco, Inc.'s Third Party Complaint by admitting, denying, and alleging as follows.

In answering Lanco, Inc.'s Third Party Complaint, Hopkins Schmidt expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

1. Lanco's Third Party Complaint fails to state a claim upon which relief can be granted. Hopkins Schmidt is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

2. Hopkins Schmidt is without knowledge or information sufficient to form a belief regarding most of the allegations contained in Lanco's Third Party Complaint and therefore denies each and every statement and allegation not expressly and specifically admitted herein.

3. With respect to paragraphs 1 through 54 of Lanco's Third Party Complaint, such allegations do not pertain to Hopkins Schmidt, and, accordingly, no response by Hopkins Schmidt is required. To the extent that those allegations do require a response by Hopkins

Schmidt, Hopkins Schmidt is without sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

4. Answering paragraph 55 of Lanco's Third Party Complaint, Hopkins Schmidt incorporates by reference each and every response to every allegation set forth in paragraphs 1 through 54 as if set forth in their entirety herein.

5. Hopkins Schmidt admits the allegations contained in paragraphs 56 through 57 of Lanco's Third Party Complaint.

6. Hopkins Schmidt denies the allegations contained in paragraphs 58 through 59 of Lanco's Third Party Complaint.

7. Hopkins Schmidt denies the allegations contained in paragraphs 60 through 61 of Lanco's Third Party Complaint.

THIRD DEFENSE

8. To the extent Hopkins Schmidt possesses an interest in a portion of the real property allegedly subject to the claim of lien filed by Lanco, the lien claimed by Lanco is subordinate to the interest of Hopkins Schmidt.

FOURTH AFFIRMATIVE DEFENSE

9. Lanco's Third Party Complaint is barred by the equitable doctrines of waiver, laches and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

10. Lanco's Third Party Complaint is barred by the doctrine of unclean hands.

SIXTH DEFENSE

11. Lanco failed to exercise reasonable diligence to ascertain the interests in the property covered by Lanco's lien and therefore failed to mitigate its damages.

SEVENTH AFFIRMATIVE DEFENSE

12. Any damages claimed by Lanco were proximately caused by its own negligence and failure to exercise reasonable care.

EIGHTH DEFENSE

13. Lanco, itself or through its agents, did not contract with or receive any permission from the owners of the property subject to its claim of lien to provide any labor, materials or services, nor did the property owners otherwise consent to the labor, materials or services allegedly provided by Lanco.

NINTH DEFENSE

14. Lanco acted with full knowledge of all the facts and circumstances surrounding its alleged injuries and damages, and thus assumed the risk of injuries and damages alleged.

TENTH DEFENSE

15. The priority date of Lanco's claim of lien does not relate back to the date Lanco began work on the property that Hopkins Schmidt has a secured interest in because the terms of the agreement regarding its services were modified after the alleged work commenced.

ELEVENTH DEFENSE

16. Lanco did not perform any labor or service, nor provide any material to any of the land that Hopkins Schmidt has a security interest in and thus Lanco is not entitled to any relief sought as against Hopkins Schmidt.

TWELFTH DEFENSE

17. The work allegedly performed by Lanco on the land that Hopkins Schmidt has a security interest in was not of a value in the amount Lanco asserts in its lien.

THIRTEENTH DEFENSE

18. Lanco's lien on the land that Hopkins Schmidt has a security interest in is invalid because the alleged work performed by Lanco is not lienable and, if such work is lienable, Lanco failed to distinguish between the lienable and non-lienable work it allegedly performed on that property.

FOURTEENTH DEFENSE

19. Hopkins Schmidt has not yet completed discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations, or claims once discovery is completed.

REQUEST FOR ATTORNEY FEES

20. Pursuant to Idaho Code §§ 12-120, 12-121, 45-513, and any other applicable provision of Idaho Law, Hopkins Schmidt is entitled to recover its attorney fees and costs in defending the Third Party Complaint filed by Lanco.

WHEREFORE, Hopkins Schmidt respectfully requests that this Court enter an order:

- A. Dismissing Lanco, Inc.'s Third Party Complaint with prejudice as against Hopkins Schmidt;
- B. Awarding Hopkins Schmidt its attorney fees and costs incurred in defending this action; and
- C. Awarding and granting such other and further relief as this Court may deem just and proper.

DATED this 8th day of January, 2009.

HOLLAND & HART LLP

By Kdt R M
Katelyn R. McKinney, for the firm
Attorneys for Hopkins HP Schmidt, LLC

CERTIFICATE OF SERVICE

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JAN 08 2009

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an
Idaho limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S
POINT DEVELOPMENT CORPORATION, an
Idaho corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C.,
a Nebraska limited liability company; LANCO,
INC., an Idaho corporation; RICHARD DINES;
BEUS EXCAVATION, LLC, an Idaho limited
liability company; ADVANCED CONCRETE,
INC., an Idaho corporation; BUILD 4 U, INC., an
Idaho corporation; KMO, INC., an Idaho
corporation; MATZDORFF RESOURCES, LLC,
an Idaho limited liability company, d/b/a Mike's
Sand & Gravel; and THE CITY OF NAMPA,
IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

Case No. CV 08-1242-C

**HOPKINS NORTHWEST FUND,
L.L.C.'S SUMMARY JUDGMENT
MEMORANDUM**

Filed in Opposition to:
**Landscapes Unlimited, L.L.C.'s Motion
for Partial Summary Judgment**

**Filed in Support of: Hopkins
Northwest Fund, L.L.C.'s Cross-
Motion for Partial Summary Judgment**

I. INTRODUCTION

The Plaintiff/Counterdefendant Hopkins Northwest Fund, L.L.C. (hereinafter "Hopkins") submits this Memorandum in Opposition to the Motion for Partial Summary Judgment filed by the Defendant/Cross-Claimant/Cross-Defendant Landscapes Unlimited, LLC (hereinafter "LU") and in support of Hopkins' Cross-Motion for Summary Judgment as against LU.

As was noted in Hopkins' Summary Judgment Memorandum filed on November 5, 2008, this action arises out of Defendant Greg Bullock's attempt to develop approximately 312 acres of real property south of Nampa, Idaho into a golf course and adjacent multiple parcel development to be generally known as Hunter's Point (hereinafter referred to as the "Development"). Defendant Bullock, together with his wife Jeanette and their companies Hunter's Point Golf Community, LLC and Hunter's Point Development Corporation (collectively, the "Borrowers"), borrowed more than \$10 million from Hopkins to finance the acquisition and development of the Development.

As it relates to the instant motion, Mr. Bullock, on behalf of Hunter's Point Golf Community, and LU entered into a written agreement to construct the Hunter's Point Golf Course (hereinafter "Golf Course Development Contract"). At the time the Golf Course Development Contract was entered, Hunter's Point Golf Course did *not* own all of the land anticipated for golf course use. In fact, Hunter's Point Golf Course still does *not* own all of the land upon which LU performed its work pursuant to the Golf Course Development Contract.

Unfortunately, and despite the alleged completion of LU's contractual responsibilities, the golf course has not been completed, many of the proposed subdivisions have not gotten off the drawing board, and much of the Development remains bare, unimproved ground. As a result, the Borrowers have not been able to pay LU pursuant to the contract.

Based upon the Borrower's failure to pay LU, LU recorded a Claim of Lien against the golf course and surrounding residential properties and, in March 2008, filed its Answer and Cross-Claim in the above entitled proceeding for breach of contract and foreclosure on its Claim of Lien. *See* Landscapes Unlimited's Ans. and Crosscl. On or about December 19, 2008, LU filed the instant Motion for Partial Summary Judgment on the following issues and matters:

1. That LU is entitled to claim a lien in the undisputed amount stated in LU's Claim of Lien on the real property where Hunter's Point golf Community, LLC's ("HPGC") golf course holes 1 through 18 and driving range are located as identified by the official real property parcel and tax ID numbers of the Canyon County Assessor's and Treasurer's Offices (the "Hunter's Point Golf Course").

2. That LU's Claim of Lien is timely, valid, and perfected in conformance with all statutory requirements of Idaho lien law, I.C. § 34-401 *et seq.*, and LU is therefore entitled to enforce the Lien against the Hunter's Point Golf Course property.

3. That LU's Claim of Lien is prior and superior to Hopkins' deeds of trust on the Hunter's Point Golf Course property, pursuant to I.C. § 45-506.

See Def. Landscapes Unlimited's Mot. for Partial Summ. J. ("LU's PSJ Mot.") at p. 2.¹

LU's Motion for Partial Summary Judgment, however, must be denied and summary judgment granted to Hopkins. As noted, *supra*, LU seeks a judgment that its \$1.3 million lien is timely, valid, appropriately perfected *and* enforceable against all Hunter's Point Golf Course property. However, in rendering judgment and fashioning any lien foreclosure decree, this Court must determine the extent of property embraced by the lien and describe with particularity each form of improvement. I.C. §45-505; *see also* *Treasure Valley Plumbing and Heating, Inc.*, 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984) (describing that such particularity may be appropriate in fashioning a lien foreclosure decree). Such a task is impossible given the record in this case.

¹ As Hopkins argued in response to Lanco's motion for partial summary judgment, it is the position of Hopkins that LU's partial summary judgment motion is procedurally infirm because it seeks adjudication against only one (1) of the parties to this action. Hopkins submits that this Court cannot grant partial summary judgment in favor of LU at this time because LU has not given notice of its partial summary judgment motion to all other parties who assert an interest in the real property at issue. For this Court to grant summary judgment on this basis makes no sense and would throw this case completely and permanently off-track.

LU's Claim of Lien does not comply with statutory requirements. While Idaho materialman's liens are to be liberally construed so as to affect their objects and promote justice, materialman's liens are also creatures of statutes and Idaho courts have held that their statutory requirements must be substantially complied with in order to create a valid lien. *Chief Indus. Inc. v. Schwendiman*, 99 Idaho 682, 685, 587 P.2d 823, 826 (1978). In this case, LU's Claim of Lien is invalid for at least three reasons: (1) insufficient property description; (2) failure to identify the name of each known owner of the golf course property; and (3) failure to serve each known owner. Moreover, LU is not legally entitled to foreclose the properties liened. LU's interest in two (2) of the parcels identified is junior to other interests and LU's lien right on a third parcel was extinguished pursuant to a non-judicial foreclosure which occurred in September, 2008. For these principal reasons, and for other reasons set forth below, this Court must deny LU's partial summary judgment motion and grant partial summary judgment in favor of Hopkins.

II. HOPKINS RESPONSE TO LU'S STATEMENT OF FACTS.

A. LU Statement of Fact No. 1: The Hunter's Point Golf Course and Residential Housing Development.

Hopkins does not generally dispute the Development consists of an 18-hole golf course and surrounding residential development or the location thereof as alleged by LU in paragraph 1 of its Statement of Facts. See Def. Landscapes Unlimited's Brief in Supp. of Mot. for Part. Summ. J. ("LU PSJ Mem.") at p. 4. *However*, LU's claim that Hunter's Point Development Corporation owns the residential housing development and Hunter's Point Golf Community owns Hunter's Point Golf Course is neither accurate nor consistent with the affidavit testimony of LU's affiant Michael Cowan. See Cowan Aff at ¶ 11 (identifying other owners besides Hunter's Point Golf Community); see also Affidavit of Hope Cheney ("Cheney Aff.") at ¶21.a.

(identifying ownership of the parcels originally encumbered by LU's Claim of Lien) on the date LU recorded its Claim of Lien); *id.* at ¶ 21.b. (identifying ownership of the parcels sought to be charged by LU pursuant to the instant motion on the date of contracting, the date of Hopkins' encumbrance and on the date LU recorded its claim of lien); *see also infra*, § III. Hopkins' Statement of Fact ("SOF") at ¶ 23. The ownership of the golf course parcels is highly relevant to the instant summary judgment motion. LU's failure to properly identify – and notice – the owners of the parcels subject to LU's Claim of Lien is fatal to LU's lien and motion.

B. LU Statement of Fact No. 2: LU-HPGC Contract to Build Hunter's Point Golf Course.

For purposes of this partial summary judgment only, Hopkins does not dispute that LU and Hunter's Point Golf Community entered into a written Golf Course Development Contract and that a copy of the written contract is attached to Mr. Priester's Affidavit as Exhibit A.

C. LU Statement of Fact No. 3: LU Fully Performed the Contract and Constructed the Hunter's Point Golf Course in 2006-2007.

For purposes of this partial summary judgment only, Hopkins does not dispute that LU performed to the satisfaction of Mr. Bullock/Hunter's Point Golf Community. *However*, as stated *supra*, Hunter's Point Golf Community was not the owner (and is not the owner) of all of the real estate upon which the golf course sits. Moreover, while Hopkins disputes that paragraph 8 of LU's Statement of Facts accurately summarizes work performed under the Golf Course Development Contract, Hopkins will not dispute that LU commenced work prior to August 14, 2006, the date that Hopkins recorded its first Deed of Trust.

D. LU Statement of Fact No. 4: Principal Contract Balance Unpaid and Owing to LU.

For purposes of this partial summary judgment only, Hopkins does not dispute the amounts described in paragraph 4 of LU's Statement of Facts are due and owing under the Golf

Course Development Contract. *However*, as described in more detail below, Hopkins does dispute that the amount may properly be foreclosed pursuant to LU's mechanic's lien.

E. LU Statement of Fact No. 5: Prejudgment Interest Owing to LU.

Subject to Hopkins' dispute that LU may properly foreclose upon the full amount set forth in paragraph 4 of LU's Statement of Facts, and for purposes of this partial summary judgment only, Hopkins does not dispute LU's calculation of prejudgment interest at 12% per annum.

F. LU Statement of Fact No. 6: LU Lien Claim and Foreclosure Suit.

For purposes of this partial summary judgment only, Hopkins does not dispute LU completed its work under the Golf Course Development Contract on August 30, 2007 and/or that it recorded its lien within thirty (30) days thereafter. *However*, Hopkins does dispute that LU's Claim of Lien complies with statutory requirements. Specifically, Hopkins disputes LU substantially complied with the statute in providing its property description, or in identifying/noticing the owners/reputed owners of the encumbered property.

G. LU Statement of Fact No. 7: The Real Property Sought to Be Charged by the LU Lien.

In its seventh (7th) Statement of Fact, LU admits that it improperly liened certain parcels of non-golf course real estate. *See* LU PSJ Mem. at pp. 10-11. LU goes on to assert that it is "narrowing" the scope of its lien from eleven (11) to six (6) parcels identified as follows:

R32082000/T06678 (52.42 Acres)
R32086010/T06677 (29.23 Acres)
R32072010/T05866 (9.62 Acres)
R32098010B/T06681 (23.08 Acres)
R32073000/T05867 (40.06 Acres)
R32083014/T06676 (19.82 Acres)

See LU Brief at pp. 10-11. For clarity and ease, these six (6) parcels will hereinafter be referred

to as the “Charged Parcels.” LU asserts that with one “relatively small” exception, the Charged Parcels are “golf course holes and driving range” owned by “HPGC/Bullock” and “hence, subject to LU Lien.” *Id.* at p. 11.

Hopkins does not dispute that LU grossly and improperly over-encumbered property in its mechanic’s lien.² However, LU *still* has not properly identified property being used solely as the golf course/driving range. As will be seen in more detail below, the Charged Parcels encumber non-golf course property. Moreover, by its moving papers, LU is attempting to get an order from this Court entitling it to foreclose upon property against which it has no legal entitlement.

H. LU Statement of Fact No. 8: Facts Establishing Priority of the Lien vis-à-vis Hopkins’ Earliest Deed of Trust.

In paragraph 8.A. of its Statement of Facts, LU attempts to set forth facts which establish the purported priority of its lien over Hopkins’ Deeds of Trust. Hopkins does not dispute that its earliest Deed of Trust is Instrument No. 2000666364, recorded on August 14, 2006 in the Canyon County, Idaho Recorder’s Office (“Deed of Trust No. 1”). Nor does Hopkins dispute that it recorded a second Deed of Trust, Instrument No. 2007043135, on June 20, 2007 in the Canyon County, Idaho Recorder’s Office (“Deed of Trust No. 2”). By this admission, however, Hopkins does not submit that LU’s interest is superior to Hopkins’s interest as to each of the parcels liened by LU in its September 26, 2007 Claim of Lien (hereinafter referred to as “Originally Liened Parcels”).

With respect to paragraph 8.B. of LU’s Statement of Facts, “Commencement of Work by LU on the Hunter’s Point Golf Course,” Hopkins will not dispute the record evidences that LU commenced work pursuant to its contract prior to August 14, 2006, the date upon which Hopkins

² In fact, there are five (5) additional parcels of land which LU encumbered which it omitted or otherwise failed to mention in its moving papers. See §III. SOF ¶¶ 13-17.

recorded Deed of Trust No. 1. *However*, the record does not support any finding or determination with respect to the amount of work done on any particular parcel or the date(s) upon which work was commenced and/or completed with respect to any particular parcel. The importance of this lack of evidence will be set forth in more detail below.

I. LU Statement of Fact No. 9: LU's Registration with the Idaho Contractor's Board.

For purposes of this motion for partial summary judgment, Hopkins does not dispute LU's allegation that it properly registered with the Idaho Contractors Board on March 7, 2006, prior to commencing work on the Hunter's Point Golf Course or that such registration does not expire until March 7, 2009.

III. HOPKINS' STATEMENT OF UNDISPUTED FACTS.

A. Hunter's Point Residential and Golf Development ("the Development").

1. The Development consists of an 18-hole golf course and surrounding residential housing development and is located in Sections 31 and 32, Township 3 North, Range 2, West of the Boise Meridian, Nampa, Canyon County, Idaho.³

B. The Golf Course Development Contract.

2. Gregory O. Bullock is the managing member of Hunter's Point Golf Community, LLC and the president of Hunter's Point Development Corporation.⁴

3. Landscapes Unlimited, LLC ("LU") is a limited liability company in the business of golf course construction.

4. In or about May, 2006, Gregory O. Bullock, on behalf of Hunter's Point Golf Community entered into a contract with LU for development of the Hunter's Point

³ See Cheney Aff. at ¶ 4.

⁴ See Aff. of Gregory O. Bullock in Supp. of Def./Countercl./Cross-cl./Third Party Pl. Lanco, Inc.'s Mot. for Partial Summ. J., filed on or about August 12, 2008 ("Bullock 8/12/08 Aff.") at ¶ 1.

Golf Course ("Golf Course Development Contract").⁵

5. For purposes of this summary judgment motion, Hopkins does not dispute the following allegations with respect to LU's work under the Golf Course Development Contract:

a. LU commenced work on the Golf Course Development Contract sometime prior to August 14, 2006.⁶

b. The last day LU supplied labor, materials, and equipment for the golf course project was August 30, 2007.⁷

c. \$1,337,637 remains due and owing to LU for labor, materials, and equipment supplied under the Golf Course Development Contract.⁸

6. There is presently no evidence in the record to support a finding of any specific work performed by LU as to any particular parcel of real estate which comprises the Hunter's Point Golf Course.

7. There is presently no evidence in the record to support a finding of any specific amount attributable to alleged improvements performed on any particular parcel of real estate which comprises the Hunter's Point Golf Course.

C. Hopkins' Deeds of Trust.⁹

8. On August 14, 2006, Hopkins recorded Deed of Trust Instrument No. 200666364 in the Canyon County, Idaho Recorder's Office ("Deed of Trust No. 1").¹⁰

⁵ See Aff. of Gregory O. Bullock in Supp. of Landscapes Unlimited's Mot. for Partial Summ. J., signed on or about November 19, 2008 ("Bullock 11/19/08 Aff."), at ¶ 3. See also Aff. of Ryan Preister, filed in Supp. of Def. Landscapes Unlimited's Mot. for Partial Summ. J. ("Priester Aff.") at ¶ 3; see also *id.*, Ex. A.

⁶ See Aff. of Rory Hutchinson filed in Supp. of Landscapes Unlimited's Mot. for Partial Summ. J. ("Hutchinson Aff.") at Ex. A (job diary from May 31, 2006 through August 14, 2006).

⁷ See Bullock 11/19/08 Aff. at ¶ 7.

⁸ See Bullock 11/19/08 Aff. at ¶ 9.

⁹ Amendments to the Hopkins Deeds of Trust are specified in the Cheney Aff., p. 2, fn.1.

¹⁰ See Hopkins Compl., Ex. 07; see also LU PSJ Mem. at p. 11.

Deed of Trust No. 1 was given for the purpose of securing a \$12,430,000 promissory note also dated August 14, 2006.¹¹

9. On June 20, 2007, Hopkins recorded Deed of Trust Instrument No. 2007043135 in the Canyon County, Idaho Recorder's Office ("Deed of Trust No. 2").¹² Deed of Trust No. 2 was given for the purpose of securing present and future loan disbursements by Hopkins to Hunter's Point Golf Community for, *inter alia*, a \$407,500 promissory note dated May 24, 2007.¹³

D. LU's Claim of Lien and Current Motion.

10. On September 26, 2007, LU recorded a Notice of Claim in the Canyon County Recorder's Office.

11. On or about December 19, 2008, LU filed the instant Motion for Partial Summary Judgment seeking a declaration that (1) it is entitled to claim of lien in the amount of \$1,337,637, plus interest, costs, and attorney fees, on the real property where Hunter's Point Golf Community, LLC's golf course holes 1 through 18 and driving range are located; (2) that its Claim of Lien is timely, valid, and perfected in accordance with Idaho law; (3) that it is entitled to enforce its Lien against the Hunter's Point Golf Course property; and (4) that the LU Claim of Lien is prior and superior to Hopkin's Deeds of Trust on the Hunter's Point Golf Course property.¹⁴

¹¹ See Hopkins Compl., Ex. 04; *see also* LU PSJ Mem. at p. 11.

¹² See Hopkins Compl., Ex. 23; *see also* LU PSJ Mem. at p. 11.

¹³ See Hopkins Compl., Ex. 22; *see also* LU PSJ Mem. at pp. 11-12.

¹⁴ See LU's PSJ Mot. at p. 2.

Property Encumbered¹⁵

12. Contrary to LU's assertion in its moving papers that its Claim of Lien only encumbered fourteen (14) parcels of property, LU's Claim of Lien actually encumbered sixteen (16) parcels of real estate.¹⁶

13. According to Hope Cheney, Advisory Title Officer and Title Examiner for TitleOne, the Originally Liened parcels are specifically identified as follows:

Hopkins Ref. No.	Parcel Number	LU Claim of Lien
(1)	R32086010	Exhibits A; Exhibit C4
(2)	R32086 (Also commonly referred to as "R32086000") ¹⁷	Exhibit A
(3)	R32082 (Also commonly referred to as "R32082000")	Exhibit A; Exhibit C4
(4)	R32086010B	Exhibit A; Exhibit C1; Exhibit C6
(5)	R32083014C	Exhibit A; Exhibit C4
(6)	R32083 (Also commonly referred to as "R32083000")	Exhibit A
(7)	Sunrise Crossing ¹⁸	Exhibit C5
(8)	R32083014E	Exhibit A; Exhibit C4
(9)	R32083014F	Exhibit A; Exhibit C4
(10)	R32083014	Exhibit A; Exhibit C4
(11)	R32083014D	Exhibit A; Exhibit C6
(12)	R32073 (Also commonly referred to as "R32073000")	Exhibit A
(13)	Ptn Royal Ridge ¹⁹	Exhibit C3
(14)	R32072 (Also commonly referred to as "R32072000")	Exhibit A
(15)	R32072010	Exhibit A
(16)	R32098010B	Exhibit A

See also Cheney Aff., Ex. "Cheney B" ("Parcels Subject to LU's Lien as Originally

¹⁵ In order to impose order upon LU's inaccurate, inconsistent, and incomplete description of the parcels subject to its lien and potentially subject to the relief requested in its Motion for Partial Summary Judgment, Hopkins has found it necessary to group the parcels into five (5) categories: the "Originally Liened Parcels" (which were previously identified/referenced in §II.H., *supra*); the "Charged Parcels" (which were previously identified/referenced in §II.G., *supra*); the Released Parcel (defined *infra* at ¶ 15); the "Specifically Abandoned Parcels" (defined *infra* at ¶ 16); and the "Omitted Parcels" (defined *infra* at ¶ 16).

¹⁶ *See* Affidavit of Hope Cheney, filed concurrently herewith ("Cheney Aff.") at ¶¶ 8-10; *see also id.*, Ex. "Cheney B". The disagreement between Mr. Cowan and Ms. Cheney regarding identification of the Originally Liened Parcels evidences the ambiguity and vagueness of LU's Claim of Lien.

¹⁷ The final zeros on parcel numbers are commonly dropped in reference thereto.

¹⁸ This parcel no longer has one (1) "Parcel Number" or "R Number" because it is residential property which has been platted (and assigned numerous parcel/tax identification numbers).

¹⁹ *See* Footnote 17, *supra*.

Recorded"). For ease of reference, the individual Originally Liened parcels will be hereinafter identified by the Hopkins Reference Number identified in the far left column.

14. At the time of recording the Claim of Lien, LU had evidence that it was encumbering parcels upon which it had not performed any work pursuant to the Golf Course Development Contract.²⁰ Specifically, Exhibit A to the LU Claim of Lien identified fourteen (14) of the sixteen (16) Originally Liened Parcels and the intended use thereof as follows:

Parcel #	Acres	Deeded Owner	Use
R32098010B	23.08	HPD, LLC	GOLF
R32072010	9.62	GREG BULLOCK	GOLF & RESIDENTIAL
R32073000	40.6	GREG BULLOCK	GOLF
R32083014	19.82	HPD, LLC	GOLF
R32083014F	.45	HPD, LLC	GOLF
R32083014E	1.03	HPD, LLC	GOLF
R32083000	.2	GREG BULLOCK	GOLF
R32086010	29.23	HPD, LLC	GOLF
32 083014C	5.24	HPD, LLC	GOLF
R32082000	52.42	HPD, LLC	GOLF
R32086010B	2.07	GREG BULLOCK	GOLF & RESIDENTIAL
OTHER PARCELS, THESE ARE PARCELS PART OF THE DEVELOPMENT BUT NOT THE GOLF COURSE ITSELF			
R32072000	20.38	GREG BULLOCK	APARTMENTS OR COMMERCIAL
R32083014D	3.51	GREG BULLOCK	RESIDENTIAL
R32086000	1	GREG BULLOCK	TEMP. CLUBHOUSE

See LU Ans./Crosscl., Ex. LU-1, Ex. A.

15. Since the filing of its Claim of Lien, LU recently partially released a portion of Parcel 13 (Ptn Royal Ridge) by virtue of Instrument No. 2008062560 recorded November 28, 2008.²¹ For ease of reference, the released portion of Parcel 13 shall

²⁰ See LU's Ans./Crosscl., Ex. A to Ex. LU-1 (containing a chart identifying the parcel numbers, parcel size, deeded owners, and property use of the Development property).

²¹ See Cheney Aff., ¶¶ 12.a. – 12.a.i..

hereinafter be referred to as “Released Parcel”.

16. In addition, in its partial summary judgment, LU narrowed the parcels “sought to be charged by the LU Lien” by specifically identifying (6) parcels (hereinafter collectively referred to as the “Charged Parcels”) and excluding five (5) parcels (hereinafter collectively referred to as the “Specifically Abandoned Parcels”).²² LU failed to reference five (5) other Originally Liened Parcels. The five (5) omitted parcels shall hereinafter be collectively referred to as the “Omitted Parcels”).²³

17. In summary, Hopkins has grouped the parcels into five (5) categories, defined as follows:

a. **“Originally Liened Parcels”** – Those sixteen (16) parcels identified by Hope Cheney as having been encumbered by LU’s September 26, 2007 Claim of Lien.

b. **“Charged Parcels”** – Those six (6) Originally Liened Parcels identified by LU in its partial summary judgment pleadings as parcels “sought to be charged by the LU Lien.” See LU PSJ Mem. at pp. 10-11.

c. **“Released Parcel”** – That portion of Parcel 13 released by virtue of Instrument No. 2008062560 recorded November 28, 2008. The Released Parcel has been legally unencumbered by LU and is not, therefore, a parcel which is subject to the relief requested by LU in its partial summary judgment.

d. **“Specifically Abandoned Parcels”** – Those five (5) Originally Liened Parcels which LU admits it is no longer seeking to impress its lien upon. LU specifically abandoned its claims against these parcels in its partial summary

²² See LU PSJ Mem. at pp. 10-11; see also Cheney Aff. at ¶ 12.b.

²³ See Cheney Aff. at ¶ 12.c.

judgment pleadings by excluding these five (5) parcels from the Charged Parcels.

Therefore, the Specifically Abandoned Parcels are not parcels subject to the relief requested by LU in its partial summary judgment.

e. **“Omitted Parcels”** – Those five (5) Originally Liened Parcels which are wholly omitted or otherwise not referenced by LU in its partial summary judgment pleadings. None of the Omitted Parcels were included by LU as a Charged Parcel. Therefore, the Omitted Parcels are not parcels subject to the relief requested by LU in its partial summary judgment.

A summary of the five (5) categories of parcels, and their application to LU’s requested Partial Summary Judgment relief, is set forth herein:

Originally Liened Parcels		Parcels Subject to LU PSJ	Parcels Not Subject to LU PSJ		
Ref. No.	Parcel No.		Released	Specifically Abandoned	Omitted
(1)	R32086010	X			
(2)	R32086				X
(3)	R32082	X			
(4)	R32086010B			X	
(5)	R32083014C			X	
(6)	R32083			X	
(7)	Sunrise Crossing				X
(8)	R32083014E			X	
(9)	R32083014F			X	
(10)	R32083014	X			
(11)	R32083014D				X
(12)	R32073	X			
(13)	Ptn Royal Ridge		Portion		Portion
(14)	R32072				X
(15)	R32072010	X			
(16)	R32098010B	X			

See also Cheney Aff., Exs. Cheney C (“Parcels Not Subject to LU’s Requested PSJ Relief”) and Cheney D (“Parcels Subject to LU’s Requested PSJ Relief”).

18. Despite LU's decision to exclude the Specifically Abandoned Parcels and Omitted Parcels in the instant proceeding, it should be clarified that no lien release has been recorded by LU with respect to these parcels and, therefore, the Specifically Abandoned Parcels and Omitted Parcels are still legally – though improperly - encumbered by LU's Claim of Lien.²⁴

19. Although LU does not allege that it performed work on non-golf course property, it liened both golf course and non-golf course property.²⁵ Specifically, Parcels 2, 4, 5, 7, 8, 9, 11, a portion of 12, 13, and 14 are all “non-golf course property.”²⁶ Parcel 12 is one of the parcels which LU seeks to be charged in the instant motion.²⁷

20. Despite including both golf course and non-golf course property in its Claim of Lien, LU did not identify, with any particularity, the work undertaken on any particular parcel of property.²⁸

21. Moreover, if LU seeks by the instant motion to only foreclose land upon which it performed golf course improvements, LU does not give legal descriptions sufficient to make necessary distinctions.²⁹

Owner or Reputed Owner of Encumbered Property

22. LU's Claim of Lien identifies “Hunter's Point Golf Community, LLC” as the owner or reputed owner of the property “charged with the lien.”³⁰ *However*, Ex. A to

²⁴ See e.g., Cheney Aff. ¶ 8 (stating that sixteen (16) parcels were encumbered by the LU Claim of Lien) and ¶ 12.a. (stating that only one (1) partial release has been recorded by LU which released a portion of Parcel (13)).

²⁵ See Cheney Aff. at ¶ 16.

²⁶ See Cheney Aff. at ¶ 17; see also Cheney Aff., Ex. “Cheney E” (“Non-Golf Course Property Encumbered by LU Lien”).

²⁷ See Cheney Aff. at ¶ 18.

²⁸ See Cheney Aff. at ¶ 9.

²⁹ Cheney Aff. at ¶ 19.

³⁰ See Landscapes Unlimited's Ans. and Crosscl. (“LU's Ans./Crosscl.”), Ex. LU-1 at p. 3, ¶ 6.

LU's Claim of Lien, which was incorporated into the Claim of Lien by reference,³¹ identified "HPD, LLC" (Hunter's Point Development, LLC) as owner of certain parcels and "Greg Bullock" as the owner of other parcels. *In fact, neither LU's Claim of Lien nor Exhibit A to the Claim of Lien correctly identified the owners of the Originally Liened Parcels.*

23. Instead, the owners of Originally Liened Parcels on September 26, 2007, the date LU recorded its Claim of Lien, were:

- a. Hunter's Point Golf Community, LLC (Parcels 1, 3, 5, 8, 9, 10, and 16);
- b. Greg Bullock, a married man (Parcel 2);
- c. Gregory O. & Jeannette Bullock, husband and wife (Parcels 4, 6, 11, 12, 14, and 15); and
- d. Hunter's Point Development Corporation (Parcels 7 and 13).³²

Notice of the Claim of Lien

24. Even though LU had evidence that entities/individuals other than and/or in addition to Hunter's Point Golf Community had ownership interests in the Development land,³³ LU did not serve any other owner with notice of its Claim of Lien.³⁴

25. LU *only* served notice of its Claim of Lien upon Hunter's Point Golf Community, LLC. LU affected such service by serving the limited liability company's

³¹ See *id.*, at p. 3, ¶ 7.

³² See Cheney Aff., ¶ 21.a.

³³ See LU's Ans./Crosscl., Ex. A to Ex. LU-1 (containing a chart identifying the parcel numbers, parcel size, deeded owners, and property use of the Development property); see also *id.*, Ex. B and C(1-6) (containing an Assessor's map and certain Deeds of Trust).

³⁴ See LU's PSJ Mem. at p. 9 (stating that a copy of the LU Lien was sent via certified mail to "HPGC [Hunter's Point Golf Community], c/o Greg Bullock." There is no dispute that Greg Bullock was the authorized representative and agent for HPGC. See Bullock 11/19/08 Aff. at ¶ 3.

“registered agent”, Greg O. Bullock.³⁵

26. LU did *not* serve Greg Bullock, the owner of Parcel 2; Greg or Jeannette Bullock, the owners of Parcels 4, 6, 11, 12, 14, and 15; or Hunter’s Point Development Corporation, owner of Parcels 7 and 13.

E. Interests Senior to that of LU’s Claim of Lien.

27. On November 4, 2005, a Deed of Trust was recorded in Canyon County, Idaho (Instrument No. 200574023) for the benefit of the Schober Family Limited Partnership. Pursuant to a non-judicial foreclosure, a Senior Trustees Deed was issued September 16, 2008 (Instrument No. 2008049956) thereby extinguishing the LU Claim of Lien on a portion of Parcel 12.³⁶

28. On November 4, 2005, a Deed of Trust was recorded in Canyon County, Idaho (Instrument No. 2005754022) for the benefit of Bank of the Cascades, formerly known as Farmers and Merchants. Instrument No. 2005754022 relates to a portion of Parcel No. 12 identified for clarity as Parcel 12c,³⁷ and that interest is senior to LU’s Claim of Lien.

29. On November 4, 2005, a Deed of Trust was recorded in Canyon County, Idaho (Instrument No. 200575083) for the benefit of Bank of the Cascades, formerly known as Farmers and Merchants. Instrument No. 200575083 relates to Parcel 15³⁸, and that interest is also senior to the interest of LU’s Claim of Lien.

IV. ARGUMENT

Citing Idaho Code sections 45-501 and 45-505, LU asserts that it is entitled to claim a

³⁵ See LU’s Ans./Crosscl., Ex. LU-1 at p. 4, ¶ 9.

³⁶ See Cheney Aff. at ¶ 22.a.i.; *see also* Cheney Aff., Exs. Cheney F and Cheney G.

³⁷ See Cheney Aff. at ¶ 22.a.ii.; *see also* Cheney Aff., Exs. Cheney F and Cheney G.

³⁸ See Cheney Aff. at ¶ 22.a.iii.; *see also* Cheney Aff., Exs. Cheney F.

lien on the Charged Parcels, LU PSJ Mem. at pp. 11, 16-17,³⁹ and that its Lien is valid, timely, and perfected in conformance with all statutory requirements of Idaho lien law. *Id.* at 19-21. LU acknowledges that its September 26, 2007 Claim of Lien was overstated but asserts that the over-encumbrance does not “invalidate” its lien because the determination of the land properly subject to the lien is for the court to determine. *Id.* at p. 17. LU further asserts that the Cowan Affidavit filed in support of its Motion for Partial Summary Judgment “clarifies” where the golf course is located. *Id.*

LU’s arguments are without merit and its Motion for Partial Summary Judgment should be denied. As will be seen in more detail below, while LU is clearly a materialman/laborer contemplated by Idaho’s lien statutes, LU has not complied with statutory requirements in the filing of its lien. In fact, LU’s Claim of Lien is invalid for at least three (3) reasons: (1) insufficient property description; (2) failure to identify the name of each known owner of the golf course property; and (3) failure to serve each known owner. In addition, contrary to the implication in LU’s partial summary judgment pleadings, LU’s Claim of Lien does not have a superior (or even existing) interest on each of the parcels named in its lien. LU’s blanket lien does not specifically identify lienable golf course property nor does it designate what portion of its lien is applicable to any particular parcel. LU’s failure to comply with the statutory requirements makes this Court’s task in rendering judgment and fashioning a lien foreclosure decree impossible. Based on the foregoing, LU’s Motion for Partial Summary Judgment should be denied and Hopkins’ Motion for Partial Summary Judgment should be granted.

³⁹ Hopkins specific responses to the arguments set forth by LU in section II. of its brief will be addressed in response to LU’s claim that its Claim of Lien contained a sufficient description of the property to be charged with the lien.

A. **LU's Motion for Partial Summary Judgment Should be Denied because its Claim of Lien Fails to Comply with Statutory Requirements.**

Under Idaho's materialman's lien statutes, every person performing labor upon, or who otherwise improves any land has a lien upon "the same" for the work or labor done or materials furnished. I.C. § 45-501. In claiming such a lien, Idaho Code section 45-507 requires the lien claimant to provide a description of the property to be charged with the lien which is "sufficient for identification." I.C. §45-507(3)(d). The purpose of Idaho's materialman's statutes is to compensate persons who provide labor and materials, the statutes are liberally construed; *however*, Idaho law is clear that statutory requirements must nevertheless be *substantially complied with* in order to perfect a valid mechanic's lien. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975). LU's Claim of Lien does *not* substantially comply with statutory requirements. Even if this Court finds LU's ambiguous property description and/or knowingly-erroneous property description does not invalidate its Claim of Lien, its recording of a "blanket lien" against multiple improvements necessarily results in a postponement of any claimed priority. Moreover, LU failed to substantially comply with statutory requirements by failing to identify the name and serving notice upon each known owner of the property charged.

1. **LU Failed to Substantially Comply with Statutory Requirements By Failing to Identify the Property Charged with the Lien Sufficient for Identification and By Knowingly and Erroneously Recording of a Claim of Lien on Non-Golf Property.**

LU's Motion for Partial Summary Judgment should be denied and its lien declared invalid. The fact that its property description is ambiguous cannot reasonably be rebutted since the definition of the Originally Liened Parcels is presently in dispute. Moreover, in preparing and recording its claim of lien, LU knowingly and erroneously encumbered property upon which it had no right to lien. Even after purportedly "narrowing" the parcels sought to be charged, LU

has failed to identify the Charged Parcels in a fashion “sufficient for identification.”

a. LU’s Property Description is Ambiguous and Does Not Substantially Comply with Statutory Requirements.

As a preliminary matter, LU failed to comply with statutory requirements by failing to identify the property charged with the lien “sufficient for identification.” See I.C. § 45-507(3)(d). The ambiguity cannot be disputed. There is no explicable reason why LU failed to mention (5) parcels of Originally Liened Parcels unless it did not know the parcels had been encumbered by its Claim of Lien. LU purports to identify the parcels originally liened on page 10 of its partial summary judgment; however, as is evidenced by Hopkins Statement of Undisputed Fact, *supra*, and the Affidavit of Hope Cheney, Advisory Title Officer/Title Examiner for TitleOne Corporation, LU omitted five (5) additional parcels which were encumbered by the Claim of Lien. See SOF ¶¶ 13, 16, 17.

Even if there was no dispute as to the “definition” of the Original Liened Parcels, the Claim of Lien does not substantially comply with the statute because it cannot be determined from the Claim of Lien what property is appropriately charged with the Claim of Lien. That is, the property description is so ambiguous that the “golf course property” upon which LU performed its work pursuant to the Golf Course Development Contract was not described sufficient for identification.

Idaho’s materialman’s statutes specify who may lien, what property may be liened, and what information must be provided in any claim of lien. See I.C. §§ 45-501, 45-507. If the notice of claim of lien has a fatally defective description, there can be no valid lien and no foreclosure proceeding may be based upon that notice of claim. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho at 685, 587 P.2d at 836 (citing *Ross v. Olson*, 95 Idaho 915, 523 P.2d 518 (1974)). LU’s ambiguous property description in its Claim of Lien is fatal. This Court

should find LU's Claim of Lien invalid on this basis alone.

b. LU's Knowing and Erroneous Encumbrance of Non-Golf Course Property Does Not Substantially Comply with Statutory Requirements.

Even if the property description was not fatally ambiguous, LU had evidence, at the time of recording the Claim of Lien, that it was encumbering parcels upon which it had not performed any work. *See* SOF ¶ 14. Specifically, Exhibit A to the LU Claim of Lien identified three (3) parcels which were “part of the Development but not the golf course itself” and two (2) parcels which were both “golf and residential”. *Id.* Despite this knowledge, LU made no effort to identify the parcels upon which it performed work under the Golf Course Development Contract. Rather, LU knowingly and improperly encumbered all fourteen (14) parcels identified on Exhibit A of LU Claim of Lien *and*, in addition, encumbered Sunrise Crossing (Parcel 7) and a portion of Royal Ridge (Parcel 13) – two residential subdivisions. *In total, eleven (11) of the sixteen (16) parcels originally liened by LU are comprised of non-golf course property.* *See* Cheney Aff., Ex. “Cheney E”.

Moreover, LU's present efforts to “narrow” the scope of its Claim of Lien to more accurately define those parcels upon which it performed work do not cure LU's failure to substantially comply with the statute in preparing and recording its Claim of Lien. Since *improperly* encumbering eleven (11) Originally Liened Parcels (the eleven non-golf course property parcels referenced *supra*), LU has recorded only one (1) partial lien release. SOF ¶ 15. The lien release releases only a portion of Parcel 13 (Royal Ridge Subdivision). *Id.* Parcel 13 is not golf course property. SOF ¶ 19. LU does not allege that it has performed any work on Parcel 13 – yet, Parcel 13 is still encumbered by LU's Claim of Lien. SOF ¶ 18. Likewise, Parcels 2, 4, 5, 6, 7, 8, 9, 11, and 14 are not golf course and remain encumbered. *See* Cheney

Aff., Ex. "Cheney E".

Although LU has failed or otherwise refused to record additional lien releases, in its motion for partial summary judgment LU specifically identifies only six (6) parcels "sought to be charged by the LU Lien" (previously identified herein as "Charged Parcels"). SOF ¶¶ 16-17; *see also* LU PSJ Mem. at p. 11. LU asserts that with one "relatively small" exception, these parcels identify golf course holes and driving range . . . and are "hence, subject to LU Lien." LU PSJ Mem. at p. 11. LU's attempt to now narrow the Originally Liened Parcels does not "cure" its failure to substantially comply with the statute and LU's deliberate and erroneous encumbrance of property which clearly had no relation to the work it performed under the Golf Course Development Contract should not be condoned. Although Idaho courts have held that a lien will not be held invalid merely because the notice of claim of lien describes or includes more land than that to which the claimant is entitled, *id.* at 686, 587 P.2d at 836 (*citing White v. Constitution Min. & Mill. Co.*, 56 Idaho 403, 55 P.2d 152 (1936)); the evidence in this case is clear that LU deliberately, knowingly, and erroneously encumbered substantial amounts of non-golf course property. *See e.g., Treasure Valley Plumbing and Heating, Inc. v. Earth Resources Co.*, 106 Idaho at 923, 684 P.2d at 325 (wherein the Court found that property had been adequately identified but specifically made a distinction as to facts in which the property description may be "erroneous or ambiguous").

Even if the Court were to hold that a lien claimant could cure its failure to comply with statutory requirements at the time of filing a foreclosure action, LU's ambiguous identification of the Charged Parcels (Parcels 1, 3, 10, 12, 15, and 16⁴⁰) *is still* fatally defective. Specifically,

⁴⁰ Hopkins does not mean to suggest that LU described the Parcels by the numbers referenced herein. As noted in Paragraph 13 of Hopkins' Statement of Undisputed Facts, the parcel numbers assigned by Hopkins is for ease in reference and clarity. Hopkins acknowledges that LU identified the parcels by the parcel ("R") numbers assigned by

Parcel 12 contains both golf course and residential property. *See Cheney Aff., Ex. "Cheney E"* (depicting 12a as Proposed Circling Raven Subdivision and 12b as Proposed Elk Basin Subdivision).

LU's property description should be deemed fatally defective. First, its Claim of Lien is obviously ambiguous as there is a material dispute as to what parcels were originally liened and/or what parcels are golf course property. Second, LU's knowingly erroneous and deliberate encumbrance of non-golf course property should not be condoned. Idaho law requires substantial compliance with materialman's statutes. LU had no legal right to lien non-golf course parcels. Finally, LU *still* has not provided this Court with a description sufficient for identification. The Charged Parcels *still* include non-golf course property which is not properly subject to LU's Claim of Lien.

2. LU's Blanket Lien Fails to Comply with Statutory Requirements.

In addition to LU's erroneous/ambiguous property descriptions and deliberate over-encumbrance, LU's blanket lien does not comply with Idaho Code section 45-508 which requires a person filing a single claim of lien against multiple improvements to designate the amount due on each improvement.

Idaho Code section 45-508 provides:

Claims against two buildings. -- In every case in which one (1) claim is filed against two (2) or more . . . improvements, owned by the same person, the person filing such claim must, at the same time, designate the amount due him on each of said . . . improvements; otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens by judgment, mortgage, or otherwise, upon . . . improvements, or upon the land upon which the same are situated.

I.C. 45-508. The statute is clear. Where a lien claimant works on several different properties

the Canyon County Assessors office. However, in this case, and as will be seen in more detail herein, that number is also ambiguous in this case.

owned by the same person, the lien claimant must allocate to each parcel the amount owing with respect to that particular parcel. If the lien claimant fails to do this, his lien against the separate parcels is junior to other recorded encumbrances. There are reported opinions that confirm the statute's meaning. *Phillips v. Salmon River Min. & Dev. Co.*, 9 Idaho 149, 72 P. 886 (1903); *Idaho Min. & Mill. Co. v. Davis*, 123 F. 396 (9th Cir. 1903); *Fairfax v. Ramirez*, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

The same idea applies under Idaho law as to properties owned by different persons. If a claimant places a single blanket lien on properties owned by different persons, the lien is invalid unless the different owners contracted jointly. *Boise-Payette Lumber Co. v. Felt*, 44 Idaho 377, 258 P.2d 169 (1927).

LU's failure to lien on a parcel-by-parcel basis, or file separate liens against the different property owners is fatal to its argument that its lien has priority against Hopkins under Idaho Code section 45-506. The statute makes sense. The right of a mechanic's lienor to prime previously-recorded consensual encumbrances is extraordinary. The legislature does not grant that special right to the lienor unless the lienor splits out the amount owed to it with respect to each parcel. Otherwise, a consensual lienor such as Hopkins would be subordinated on the basis of work done by the lienor on completely different property. *See generally Brown v. Hawkins*, 66 Idaho 351, 359, 158 P.2d 840, 843 (1945), *overruled in part on other grounds, Mitchell v. Flandro*, 95 Idaho 228, 506 P.2d 455 (1972).

Of course, this rule requires not only that the Court adjudicate the *amount* owing to LU on a parcel by parcel basis; it also requires that the Court adjudicate LU's *right to lien* on a parcel by parcel basis. By way of example, if the Court finds that LU performed \$50,000 of work on Parcel 12 (R32073000/T05867), but LU's lien right was extinguished by virtue of the

non-judicial foreclosure, LU must be able to establish what portion of its claim was not extinguished (i.e., work performed on the portion of the parcel owned by Gregory O. and Jeanette Bullock which was not the subject of the non-judicial foreclosure) or LU cannot lien Parcel 12. Likewise, LU cannot “tack-on” the \$50,000 associated with Parcel 12 to any other parcel.

In its moving papers, LU incorporates an unarticulated assumption to the contrary. LU’s moving papers are silently premised on the contention that the balance of the amount due and owing under its Golf Course Development Contract can form the basis of a valid lien on any parcel located on the golf course (whether that parcel contains non-golf course property, or not). However, LU supplies absolutely no legal support for this proposition.

LU cites to no Idaho law because there is no statutory or case law support in Idaho for that proposition. Idaho Code provides that if a person performs labor upon a building, structure, or improvement, then the person has a lien upon “the same” and upon the land required for use of that building, structure, or improvement. I.C. §§ 45-501, 45-505. The lien operates in rem. *Franklin Bldg. Supply Co., supra*, 139 Idaho at 8509, 87 P.3d at 959. It is a special lien that extends only to the owner’s land upon which the work was performed. The lien does not extend to other property owned by the owner. *Brown, supra*, 66 Idaho at 359, 158 P.2d at 843 (mechanic’s lien does not extend to real property owned by the defendant other than the real property upon which the work was done).

Section 45-508, of course, compels the same conclusion. The statute obligates the lien claimant to identify the amount “due him on *each* of said buildings . . . or other improvement[s]” (emphasis added). This requires an independent analysis of the amount “due him” on the separate improvement. LU has simply not provided the information necessary for this Court to

make such a determination for purposes of fashioning a lien foreclosure decree as sought by LU in its partial summary judgment.

B. LU's Claim of Lien Fails to Identify and Serve the Name of Each Known Owner of Golf Course Property.

In addition to recording a Claim of Lien with an ambiguous and knowingly erroneous property description, LU failed to identify and serve the name of each known owner – or reputed owner – of the property encumbered.

As is evidenced by Exhibits attached to LU's Claim of Lien, which includes relevant Deeds of Trust, LU had full notice, at the time of filing of its Claim of Lien, that other entities and/or individuals other than Hunter's Point Golf Community owned the real property which was the subject of its lien. Specifically, LU knew or should have known based upon the Exhibits attached to its Claim of Lien that the following entities/individuals had ownership interests in the parcels encumbered by its Claim of Lien: Greg Bullock, as a married man (Parcel 2); Gregory O. & Jeannette Bullock, as husband and wife (Parcels 4, 6, 11, 12, 14, and 15); Hunter's Point Development Corporation (Parcel 7 and 13).

Nevertheless, paragraph 6 of LU's Claim of Lien only identifies the owner or reputed owner of the property to be charged with the lien as:

Hunter's Point Golf Community, LLC, an Idaho limited liability company
c/o Greg O. Bullock, Registered Agent
504 Bayhill Drive
Nampa, ID 83686

See Ans. and Crosscl., Ex. LU-1, p. 3, ¶ 6. In accordance therewith, LU served only Hunter's Point Golf Community, LLC, with notice of the Claim of Lien. Neither Gregory O. Bullock nor

Jeannette Bullock, individually, was served with notice.⁴¹ And, while a lien claimant need not serve both a husband and wife of notice of a lien claim against community property, *see e.g., Layright Prods. Co. v. Lux*, 86 Idaho 477, 388 P.2d 105 (1964), in this case, neither member of the Bullock community was served with notice with respect to the community's ownership of the property. Likewise, Hunter's Point Development Corporation was never served. LU's service of its Claim of Lien service upon Hunter's Point Golf Community does not substantially comply with service upon *all* owners or reputed owners and should not be deemed sufficient to meet the statutory requirements. Materialman's liens are creatures of statute and statutory requirements must be "substantially complied with" in order to create a valid lien. *Chief Indus., Inc. v. Schwendiman*, *supra*, (citing *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975); *Ross v. Olson*, 95 Idaho 915, 523 P.2d 418 (1974); *Boone v. P & B Logging Co.*, 88 Idaho 111, 397 P.2d 31 (1964)). Based on LU's failure to properly identify all property owners in its Claim of Lien, and serve notice of its Claim of Lien upon all owners, LU's lien should be deemed invalid.

C. LU is Seeking to Enforce a Claim of Lien on Parcels of Property Upon Which it Has No Legal Entitlement.

In addition to failing to meet the statutory requirements of Idaho's materialman's lien statutes, LU ambiguously seeks relief on parcels to which it has no legal entitlement.

As noted, *supra*, LU is still seeking relief against the Charged Parcels: Parcel (1) (R32086010/T06677); Parcel 3 (R32082000/T06678); Parcel 10 (R32083014/T06676); Parcel 12 (R32073000/T05867); Parcel 15 (R32072010/T05866); and Parcel 16 (R32098010B/T0661). *See* LU Brief at p. 11; *compare* Cheney Aff., Ex. "Cheney D". LU's partial summary judgment motion states that the relief sought by LU includes not only a determination of priority over

⁴¹ *See* LU's PSJ Mem. at p. 9 (stating that a copy of the LU Lien was sent via certified mail to "HPGC [Hunter's Point Golf Community], c/o Greg Bullock." There is no dispute that Greg Bullock was the authorized representative and agent for HPGC. *See* Bullock 11/19/08 Aff. at ¶ 3.

Hopkins' Deeds of Trust *but also* a declaration that "LU is therefore entitled to enforce the LU Lien against the Hunter's Point Golf Course Property." See LU PSJ Mot. at p. 2, ¶ 2. However, LU's lien has been extinguished with respect to a portion of Parcel 12. Moreover, LU does not have a senior lien interest with respect to another portion of parcel Parcel 12 or Parcel 15.

1. LU's Requested Relief Should Be Denied Because LU Does Not Have an Existing Lien Right in a Portion of Parcel 12.

LU's present motion for partial summary judgment, which seeks a declaration that it is entitled to "enforce" its Lien against the Hunter's Point Golf Course Property, including Parcel 12, should be denied because LU does not have an existing lien right with respect to a portion of Parcel 12.

On November 24, 2005, a Deed of Trust was recorded in Canyon County, Idaho (Instrument No. 200574023) for the benefit of the Schober Family Limited Partnership. See SOF ¶ 27. The Deed of Trust was prior in time to the LU Claim of Lien and, therefore, a superior interest. See I.C. § 45-1502 *et seq.* On August 26, 2008, a non-judicial foreclosure sale was held. See Cheney Aff., Ex. "Cheney H". LU was given notice of the non-judicial foreclosure sale. *Id.* Hopkins HP Elk Basin, LLC purchased the Deed of Trust. See Cheney Aff., Ex. "Cheney G".

Idaho Code § 45-1508 provides, in pertinent part:

Finality of sale. – A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale.

I.C. § 45-1508. LU's received notice of the non-judicial foreclosure. See Cheney Aff. at p. 10, fn. 17; *see also* Cheney Aff., Ex. "Cheney G". Pursuant to the above-noted non-judicial foreclosure, a Trustee's Deed was issued September 16, 2008 (Instrument No. 2008049956),

thereby extinguishing LU's Claim of Lien on a portion of Parcel 12. *See e.g., Cheney Aff. Ex. "Cheney F"*.

2. LU's Requested Relief Should Be Denied Because LU Does Not Have a Senior Interest with Respect to a Portion of Parcel 12 and Parcel 15.

In addition to the extinguishment of its lien interest with respect to a portion of Parcel 12, LU does not have a senior interest in another portion of Parcel 12 and/or Parcel 15.

As noted by the Cowan Affidavit at paragraph 11, Parcel 12 contains holes 10, 15, 16, and approximately five percent (5%) of hole 11 of the golf course. *See Cowan Aff. at ¶ 11, p. 7.* Moreover, the property contains two (2) non-golf course residential subdivisions commonly known as Circling Raven and Elk Basin. *See Cheney Aff., Ex. "Cheney E"* (identifying non-golf course property on Parcel 12). Parcel 15 contains approximately ninety-five percent (95%) of hole 11 of the golf course. *Cowan Aff. at ¶ 11, p. 6.*

On November 4, 2005, two Deeds of Trust was recorded in Canyon County, Idaho (Instrument Nos. 2005754022 and 200575083) for the benefit of Bank of the Cascades, formerly known as Farmers and Merchants. *See SOF at ¶¶ 28 and 29.* Instrument No. 2005754022 relates to a portion of Parcel No. 12 identified for clarity on Exhibit Cheney F as 12c. Instrument No. 200575083 relates to Parcel 15 identified for clarity on Exhibit Cheney F as 15. Both November 4, 2005 Deeds of Trust are clearly superior to the LU's Claim of Lien. Therefore, LU is not entitled to its requested relief on summary judgment as to these parcels.

D. LU's Motion for Partial Summary Judgment Must be Denied because this Court Does Not Have the Information Necessary to Fashion a Foreclosure Decree in its Favor.

Idaho Code section 45-505 requires the Court, in fashioning any decree of foreclosure to determine what land is properly subject to the claim of lien. In this case, LU's original claim of lien encumbered sixteen (16) separate parcels of real property. In its foreclosure action, LU

acknowledges ten (10) of those parcels are not "sought to be charged" with its lien but, inexplicably, LU has never recorded releases on most of those properties. With respect to the six (6) parcels which LU sought "be charged" in the instant proceedings, two (2) of the parcels (Parcels 12 and 15), in whole or in part, contain non-golf course property, are not presently owned by the party identified in and noticed with the Claim of Lien, and/or are parcels upon which LU does not have a valid and/or senior lien interest.

Simply put, as a result of LU's failure to comply with statutory requirements, this Court does not have the information necessary to properly fashion a foreclosure deed as requested by LU. Even if the Court were to find that LU's knowing erroneous overencumbrance of non-golf course property and failure to identify/notice owners of the encumbered property did not invalidate its lien, LU's filing of its blanket lien has left the Court incapable of determining how much, if any, of LU's lien still exists on which specific parcels. There is no dispute that LU did not identify, with any particularity, the work undertaken on any particular parcel of property, *see* SOF ¶ 30; therefore, even if the Court were inclined to apportion LU's Lien among parcels upon which LU presently has an existing and senior interest, it would be unable to do so.

V. HOPKINS IS ENTITLED TO SUMMARY JUDGMENT AGAINST LU

Even if this Court does *not* find that LU's failure to substantially comply with Idaho's mechanic's lien statutes invalidated its Claim of Lien; based upon the admissions of LU, the omissions of LU, and operation of Idaho law, Hopkins is nevertheless entitled to have its interests declared superior/senior to the lien claim interests advanced by LU as to the following: the Specifically Abandoned Parcels and the Omitted Parcels.

In *Harwood v. Talbert*, 136 Idaho 672, 677-78, 39 P.3d 612 (2001), the Idaho Supreme Court recognized:

a district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court . . . motion(s) for summary judgment allow[] the court to rule on the issues placed before it as a matter of law [and] the moving party runs the risk that the court will find against it.

Furthermore, where evidentiary facts are undisputed and the trial court, rather than the jury, will be the trier of fact, summary judgment can be rendered despite the possibility of conflicting inferences because the Court alone will be responsible for resolving the conflict between those inferences. *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982).

A. Hopkins is Entitled to Summary Judgment Against LU as to the Specifically Abandoned Parcels.

Parcels 4, 5, 6, 8, and 9 (referred to throughout this memorandum as the Specifically Abandoned Parcels) are all non-golf course property. *See* Cheney Aff., Ex. "Cheney E". These parcels are, therefore, improperly encumbered by LU's Claim of Lien. *See* LU PSJ Mem. at § II., p. 17 (wherein LU admits that it supplied labor, equipment and materials for the construction of an 18-hole golf course and driving range). LU has admitted that it is no longer seeking to impress its lien upon Parcels 4, 5, 6, 8, and 9. *See also* LU PSJ Mem. at pp. 10-11. Hopkins has a valid encumbrance on these parcels. *See* Cheney Aff., ¶¶ 5-6; *see also* Cheney Aff., Ex. "Cheney A". Therefore, Hopkins is entitled to summary judgment in its favor as to the priority of interest over that of LU as to the Specifically Abandoned Parcels.

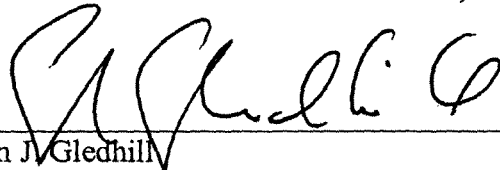
B. Hopkins is Entitled to Summary Judgment Against LU as to the Omitted Parcels.

Parcels 2, 7, 11, 13 and 14 (referred to throughout this memorandum as the Omitted Parcels) are all non-golf course property. *See* Cheney Aff., Ex. "Cheney E". These parcels are, therefore, improperly encumbered by LU's Claim of Lien. *See* LU PSJ Mem. at § II., p. 17 (wherein LU admits that it supplied labor, equipment and materials for the construction of an 18-

hole golf course and driving range). LU does not reference these parcels at all in its partial summary judgment pleadings but, importantly, has not included these parcels in the Charged Parcels identified at pages 10-11 of its memorandum. *See id.*, pp. 10-11. Hopkins has a valid encumbrance on these parcels. *See Cheney Aff.*, ¶¶ 5-6; *see also Cheney Aff.*, Ex. "Cheney A". Therefore, Hopkins is entitled to summary judgment in its favor as to the priority of interest over that of LU as to the Omitted Parcels.

DATED this January day of 8, 2009.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.



Stephen J. Gledhill

Attorneys for Counterdefendant Hopkins Northwest Fund, L.L.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an
Idaho limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S
POINT DEVELOPMENT CORPORATION, an
Idaho corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C.,
a Nebraska limited liability company; LANCO,
INC., an Idaho corporation; RICHARD DINES;
BEUS EXCAVATION, LLC, an Idaho limited
liability company; ADVANCED CONCRETE,
INC., an Idaho corporation; BUILD 4 U, INC., an
Idaho corporation; KMO, INC., an Idaho
corporation; MATZDORFF RESOURCES, LLC,
an Idaho limited liability company, d/b/a Mike's
Sand & Gravel; and THE CITY OF NAMPA,
IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

F I L E D
A.M. P.M.

JAN 08 2009

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Case No. CV 08-1242-C

AFFIDAVIT OF HOPE CHENEY

Filed in Opposition to:
Landscapes Unlimited, L.L.C.'s Motion
for Partial Summary Judgment

Filed in Support of: Hopkins
Northwest Fund, L.L.C.'s Cross-
Motion for Partial Summary Judgment

STATE OF IDAHO)
) ss.
County of Ada)

HOPE CHENEY, being first duly sworn upon oath, deposes and states as follows:

1. I am employed by TitleOne Corporation, and I make this affidavit based upon my own personal knowledge. If called as witness, I could and would competently testify as to the truth of the matters set forth herein.

2. I have been working for a title insurance company since 1988. I first starting examining titles in 1993 and have continued doing so ever since. I am currently an advisory title officer and title examiner for TitleOne Corporation.

3. I do not have any relationships, other than professional relationships, with those parties involved in this litigation.

4. The Hunter's Point Development consists of an 18-hole golf course and surrounding residential housing development and is located in Sections 31 and 32, Township 3 North, Range 2, West of the Boise Meridian, Nampa, Canyon County, Idaho.

5. I am familiar with the property encumbered by Hopkins Northwest Fund, L.L.C. (hereinafter "Hopkins") pursuant to its Deeds of Trust recorded August 14, 2006 (Deed of Trust Instrument No. 200666464), and June 20, 2007 (Deed of Trust Instrument No. 2007043135).¹

6. Attached hereto as **Exhibit Cheney A** is a map titled "**Hopkins Encumbrance**". This map was created by my office, under my direction, and depicts all parcels encumbered by Hopkins August 14, 2006 and June 20, 2007 Deeds of Trust as they relate to the golf course.

¹ It should be noted the original Hopkins Deed of Trust, recorded August 14, 2006, was modified by an amended Deed of Trust recorded November 16, 2007 (Instrument No. 207075912). The Amended Deed of Trust added parcels 21 and 21A to the encumbered parcels. The Original encumbrance was amended on January 10, 2008 adding parcel 22 to the Deed of Trust (Instrument No. 2008001845).

a. On this map, and all other maps attached to this affidavit, the "R" numbers are Real Property Parcel numbers assigned by Canyon County to identify parcels. These numbers are the same numbers used by Landscapes Unlimited ("hereinafter referred to as "LU") in its Claim of Lien, its partial summary judgment briefing, and by Mr. Cowan in his affidavit.

7. I am familiar with the Claim of Lien recorded by LU in the Canyon County Recorder's Office as Instrument # 2007064896 on September 26, 2007.

8. As a title officer reviewing LU's Claim of Lien, it is my opinion that the Claim of Lien encumbered sixteen (16) total parcels including the fourteen (14) parcels listed on Exhibit A to the Claim of Lien, portions of Royal Ridge as described in Exhibit C3 to the Claim of Lien, and Sunrise Crossing as described in Exhibit C5 to the Claim of Lien.

9. The Claim of Lien does not describe with particularity the work undertaken on any one of the sixteen (16) parcels of property which are subject to the lien, but rather, is a blanket lien for the sum of \$1,337,637.00. "Blanket Lien" in this context means a single lien filed for labor provided for, improvements made upon and/or materials supplied to multiple parcels of property.

10. Attached hereto as **Exhibit Cheney B** is a map titled "**Parcels Subject to LU's Lien as Originally Recorded**". This map was created by my office, under my direction, and depicts all parcels encumbered by LU by virtue of Instrument #2007064896.

a. For ease of reference, I have denominated numeric references 1-16 to the Canyon County Real Property Parcel Numbers. These numeric references correspond to LU's Claim of Lien as follows:

Ref. No.	Parcel Number	LU Claim of Lien
(1)	R32086010	Exhibit A; Exhibit C4
(2)	R32086 (Also commonly referred to as "R32086000") ²	Exhibit A
(3)	R32082 (Also commonly referred to as "R32082000")	Exhibit A; Exhibit C4
(4)	R32086010B	Exhibit A; Exhibit C1; Exhibit C6
(5)	R32083014C	Exhibit A; Exhibit C4
(6)	R32083 (Also commonly referred to as "R32083000")	Exhibit A
(7)	Sunrise Crossing ³	Exhibit C5
(8)	R32083014E	Exhibit A; Exhibit C4
(9)	R32083014F	Exhibit A; Exhibit C4
(10)	R32083014	Exhibit A; Exhibit C4
(11)	R32083014D	Exhibit A; Exhibit C6
(12)	R32073 (Also commonly referred to as "R32073000")	Exhibit A
(13)	Ptn Royal Ridge ⁴	Exhibit C3
(14)	R32072 (Also commonly referred to as "R32072000")	Exhibit A
(15)	R32072010	Exhibit A
(16)	R32098010B	Exhibit A

11. I have reviewed some of the pleadings filed by LU in support of its Motion for Partial Summary Judgment including, but not necessarily limited to, the Affidavit of Michael Scott Cowan, Deputy Canyon County Assessor.

12. Attached hereto as **Exhibit Cheney C** is a map titled "**Parcels Not Subject to LU's Requested PSJ Relief**". This map was created by my office, under my direction, and depicts three (3) categories of parcels which, in my opinion, are not presently the subject of LU's requested partial summary judgment relief. These parcels fall into three (3) separate categories:

a. "Released Parcels". This category includes parcels originally encumbered by LU's September 26, 2007 Claim of Lien which have been officially released by virtue

² The final zeros on parcel numbers are commonly dropped in reference thereto.

³ This parcel no longer has one (1) "Parcel Number" or "R Number" because it is residential property which has been platted (and assigned numerous parcel/tax identification numbers).

⁴ See Footnote 3, *supra*.

of a Lien Release recorded by or on behalf of LU. This category includes the following parcels:

i. Portion of Parcel (13): Partial Release #2008062560.⁵ This release is designated on **Exhibit Cheney C** in lime green.

b. "Specifically Abandoned Parcels". This category includes parcels originally encumbered by LU's September 26, 2007 Claim of Lien which were "excluded" or "abandoned" by LU in the partial summary judgment pleadings at pages 10 through 11 of LU's Brief in Support of Motion for Partial Summary Judgment. This category includes the following parcels:

- i. Parcel (4): R32086010B;
- ii. Parcel (5): R32083014C;
- iii. Parcel (6): R32083;
- iv. Parcel (8): R32083014E; and
- v. Parcel (9): R32083014F.

c. "Omitted Parcels". This category includes parcels originally encumbered by LU's September 26, 2007 Claim of Lien which were "omitted" or otherwise "not mentioned" by LU in their partial summary judgment pleadings. That is, the parcels were encumbered by virtue of the September 26, 2007 Claim of Lien, have not been formally released pursuant to a recorded lien release, but were not identified as one of the parcels "included" as one of the six (6) real property parcels "sought to be charged by the LU Lien" as specifically identified on pages 10 and 11 of LU's Brief in Support of Motion for Partial Summary Judgment. . This category includes the following parcels:

⁵ On or about November 28, 2008, LU recorded a Partial Lien Release which partially released its prior partial lien on the Royal Ridge Subdivision. The partial lien release did not release all of Royal Ridge. The partial lien release released LU's lien as to Lots 1, 2, 3, 4, 15, 16, and 17, Block 1 and Lot 1 Block 3 of Royal Ridge. Based upon the recorded description identified as "C3 in Exhibit 'C'" of LU's Claim of Lien, Lots 5 through 17 Block 1 and Lot 1 Block 2 of the subdivision are still encumbered by LU's Claim of Lien.

- i. Parcel (2): R32086;
- ii. Parcel (7): Sunrise Crossing;
- iii. Parcel (11): R32083014D;
- iv. Parcel (13): Ptn Royal Ridge; and
- v. Parcel (14): R32072.

13. Attached hereto as **Exhibit Cheney D** is a map titled "**Parcels Subject to LU's Requested PSJ Relief**". This map was created by my office, under my direction, and depicts the six (6) parcels specifically referenced by LU as the parcels of real property "sought to be charged by the LU Lien" as identified on pages 10 and 11 of LU's Brief in Support of Motion for Partial Summary Judgment.

14. Exhibits "Cheney C" and "Cheney D", taken together, reflect all property originally liened by LU on September 26, 2007 (*compare* Exhibit "Cheney B").

15. I have reviewed the conceptual drawing of Hunter's Point Golf Community, LLC, which is attached as Exhibit A to Mr. Cowan's Affidavit, along with a conceptual plan prepared by Mason & Stanfield, dated June 13, 2005, and I am familiar with the location of golf course property and non-golf course property in the Hunter's Point Development.

16. Contrary to the allegations contained in LU's pleadings and supporting documentation, some of the property which is included in the LU Claim of Lien, is "non-golf course property."

17. Attached hereto as **Exhibit Cheney E** is a map titled "**Non-Golf Course Property Encumbered by LU Lien**". This map was created by my office, under my direction, and depicts non-golf course property which encumbered by LU's Claim of Lien. To wit:

- a. Parcel 2 and Parcel 4 are not golf course property. These parcels sit within the Rim RMH, which is planned for Residential development.
- b. Parcel 5 is the clubhouse, but in my opinion is not a part of the golf course upon which LU performed its work.

c. Parcel 7 is a residential development known as Sunrise Crossing and is not golf-course property.

d. According to my conceptual plan, Parcel 8 is to be used for parking and is not golf-course property.

e. I am not entirely certain what the plan is for Parcel 9; however, it is my opinion that it is not a golf course hole or a part of the driving range and is not, therefore, golf-course property.

f. Parcel 11 and a portion of Parcel 12 (identified on Exhibit Cheney E as “12b”) identify the Proposed Elk Basin residential subdivision.

g. Parcel 14 and a portion of Parcel 12 (identified on Exhibit Cheney E as “12a”) identify the Proposed Circling Raven residential subdivision.

h. Parcel 13 is a residential subdivision commonly known as Royal Ridge.

18. As is noted on Exhibit Cheney B, Parcels 11, 12 (including 12a and 12b), and 14 are all encumbered by LU’s Lien as originally recorded on September 26, 2007. And, though LU has “specifically excluded” Parcel 14⁶ and “omitted” Parcel 11⁷, Parcel 12 (R32073) has been identified as a parcel of real property “sought to be charged by the LU Lien”. See LU Brief in Supp. of Mot. for Partial Summ. J. at p. 11.

19. The Landscapes Unlimited lien clearly encumbers non golf course property, and does not supply the correct legal descriptions of the golf course.

20. Page 11 of LU’s Brief in Support of Motion for Partial Summary Judgment states:

With the exception of a relatively small area depicted in the unshaded areas of the aerial map marked as Exhibit H (which were the subject of a recent non-judicial foreclosure sale where Hopkins was the purchaser), all of the remaining golf course holes and driving range are owned by HPGC/Bullock and, hence, subject to the LU Lien. Cowan Aff. ¶ 10 (last paragraph discussing Exs. H & I), and ¶ 11 (Table reference to R32073000/T05867).

⁶ See Paragraph 9.a.ii., *supra*; see also Exhibit Cheney C.

⁷ See Paragraph 9.a.iii., *supra*; see also Exhibit Cheney C.

The meaning of this statement is not entirely clear. To the extent that it suggests that Hunter's Point Golf Community ("HPGC") owns all of the golf course holes and driving range (with the exception noted), it is not accurate. To the extent that it suggests that HPGC and Gregory O. Bullock "jointly" owned own all of the golf course holes and driving range (with the exception noted), the statement is not accurate.

21. I have reviewed the chains of title of the parcels sought to be charged by the LU Lien, as described on pages 10 and 11 of LU's Brief in Support of Motion for Partial Summary Judgment, and have learned the following:

a. As of the date of the filing of the Claim of Lien, the property was owned as follows:

Ref. No.	Parcel #	Ownership of Property as of September 26, 2007 (The Date LU Recorded its Claim of Lien)
(1)	R32086010	Hunter's Point Golf Community, LLC
(2)	R32086	Greg Bullock, a married man
(3)	R32082	Hunter's Point Golf Community, LLC
(4)	R32086010B	Gregory O. & Jeannette Bullock, husband and wife
(5)	R32083014C	Hunter's Point Golf Community, LLC
(6)	R32083	Gregory O. & Jeannette Bullock, husband and wife
(7)	Sunrise Crossing ⁸	Hunter's Point Development Corporation
(8)	R32083014E	Hunter's Point Golf Community, LLC
(9)	R32083014F	Hunter's Point Golf Community, LLC
(10)	R32083014	Hunter's Point Golf Community, LLC
(11)	R32083014D	Gregory O. & Jeannette Bullock, husband and wife
(12)	R32073	Gregory O. & Jeannette Bullock, husband and wife
(13)	Ptn Royal Ridge ⁹	Hunter's Point Development Corporation
(14)	R32072	Gregory O. & Jeannette Bullock, husband and wife
(15)	R32072010	Gregory O. & Jeannette Bullock, husband and wife
(16)	R32098010B	Hunter's Point Golf Community, LLC

⁸ This parcel no longer has one (1) "Parcel Number" or "R Number" because it is residential property which has been platted (and assigned numerous parcel/tax identification numbers).

⁹ See Footnote 14, *supra*.

b. Chains of Title on the six (6) parcels sought to be charged by the LU Lien, as described on pages 10 and 11 of LU's Brief in Support of Motion for Partial Summary Judgment, passed as follows:

Ref. No.	Parcel No.	Property Ownership as of:		
		5/15/06 (HPGC/LU Contract)	8/14/06 (Hopkins Encumbrance)	9/26/07 (LU Claim of Lien Recorded)
(1)	R32086010	Nelson-Deppe, Inc.	HPGC ¹⁰	HPGC
(3)	R32082	Nelson-Deppe, Inc.	HPGC ¹¹	HPGC
(10)	R32083014	Nelson-Deppe, Inc.	HPGC ¹²	HPGC
(12)	R32073	Gregory O. & Jeannette Bullock ¹³	Gregory O. & Jeannette Bullock	Gregory O. & Jeannette Bullock
(15)	R32072010	Gregory O. & Jeannette Bullock ¹⁴	Gregory O. & Jeannette Bullock	Gregory O. & Jeannette Bullock
(16)	R32098010B	HPGC ¹⁵	HPGC	HPGC

Therefore, to the extent that LU was suggesting, by virtue of the above-cited paragraph that HPGC is and was the sole owner of the parcels of property upon which it seeks to enforce its Claim of Lien, LU is incorrect. The above table specifies that Gregory O. & Jeannette Bullock, as husband and wife, owned two (2) of the parcels identified on the date that LU recorded its Claim of Lien.¹⁶

22. In addition, it is my opinion that LU is seeking to foreclose on parcels upon which LU does not have a "senior" interest. To wit:

a. Parcel 12: Parcel 12 contains two (2) senior interests to that of LU:

¹⁰ Pursuant to Warranty Deed 200666359; Recorded 8/14/06 from Nelson-Deppe, Inc. to HPGC.

¹¹ See Footnote 7, *supra*.

¹² See Footnote 7, *supra*.

¹³ Pursuant to Warranty Deed 200574021; Recorded 11/4/05 from Schober Family Limited Partnership, to Gregory O. and Jeannette Bullock, husband and wife.

¹⁴ Pursuant to Warranty Deed Nos. 200575079, 200575080, and 200576081; Recorded 11/10/05 from Schmid/Lee/Rietmann to Gregory O. and Jeannette Bullock, husband and wife.

¹⁵ Pursuant to Warranty Deed 200609256; Recorded 2/8/2006 from Miller, husband and wife, to HPGC.

¹⁶ It should be clarified that as of the date of this affidavit, Parcel 12 is owned by two (2) separate individuals/entities. **Cheney Exhibit G** is a map which was created by my office, under my direction, and depicts the present ownership of Parcel 12. Specifically, 12 is owned by HP Elk Basin, LLC by virtue of a Trustees Deed recorded September 16, 2008 (Instrument No. 2008049956). Title to Parcels 12c, as depicted on Cheney Exhibit G, is vested in Gregory O. Bullock and Jeanette E. Bullock, husband and wife, by virtue of a Warranty Deed recorded November 4, 2005 (Instrument No. 200574022).

i. A Senior Trustees Deed (Instrument 2008049956), recorded September 16, 2008.¹⁷ The Senior Trustees Deed relates back to an underlying Deed of Trust recorded November 4, 2005 (Instrument 200574023) for the benefit of the Schober Family Limited Partnership; and

ii. A Senior Deed of Trust (Instrument 2005754022), recorded November 4, 2005 for the benefit of Bank of the Cascades, formerly known as Farmers and Merchants.

iii. Parcel 15: Parcel 15 has a Senior Deed of Trust (Instrument 200575083), recorded November 10, 2005 for the benefit of Bank of the Cascades, formerly known as Farmers and Merchants.

23. Attached hereto as **Exhibit Cheney F** is a map titled “**Parcels Upon Which LU Does Not Have a Senior Lien Interest**”. This map was created by my office, under my direction, and identifies three (3) parcels of property, each of which are specifically referenced by LU as the parcels of real property “sought to be charged by the LU Lien” on pages 10 and 11 of LU’s Brief in Support of Motion for Partial Summary Judgment, upon which LU does not have a senior lien interest.

a. This map only includes that portion of the LU Claim of Lien which LU is presently seeking to charge with the LU Lien.

b. By way of explanation, Exhibit Cheney F is a duplicate of Exhibit Cheney D with specific identification of those parcels of property upon which LU does not have a senior/superior lien interest.

24. Based upon my examination of the recorded LU lien, relevant Deeds of Trust, conceptual drawing of Hunter’s Point Golf Community, LLC, and other knowledge gleaned from my analysis and review of the records supplied to me in this case, it is my opinion that LU’s lien has over-encumbered property and has ambiguously sought to foreclose upon property upon

¹⁷ As is evidenced by the document attached hereto as **Exhibit Cheney H**, LU received Notice of the non-judicial foreclosure.

which it has no senior interest. "Over-encumbered" in this context means the lien is overbroad and encumbers property not subject to LU's work. "Ambiguous" in this context means that the LU Lien includes parcels which contain non-golf course property and/or upon which LU does not have a superior/senior lien interest.

25. The following chart briefly summarizes the analysis contained in the foregoing affidavit.

Description of Parcels	Parcel Reference Numbers															
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
Subject to LU's Lien As Originally Recorded ¹⁸	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Not Subject to LU's Requested PSJ Relief ¹⁹		X		X	X	X ²⁰	X	X	X		X		P ²¹	X		
Subject to LU's Requested PSJ Relief ²²	X		X							X		X			X	X
Non-Golf Course Property Encumbered by LU Lien ²³		X		X	X		X	X	X		X	P ²⁴	X	X		
Property Not Presently Owned by HPGC ²⁵		X		X		X	X				X	X	X	X	X	
Upon Which LU Does Not Have a Senior Lien Interest ²⁶												P ²⁷			X	

¹⁸ See ¶¶ 7-8; 10, *supra*; see also Exhibit Cheney B.

¹⁹ See ¶¶ 11-12, *supra*; see also Exhibit Cheney C.

²⁰ Parcel 6 is a "Specifically Excluded" as that term is defined in paragraph 12.b., *supra*. Based upon LU's exclusion of that parcel, it is not believed to be a golf-course parcel upon which LU's performed labor and/or supplied materials.

²¹ As stated in paragraph 12.a.1., *supra*, that portion of Royal Ridge Subdivision as identified in LU's Claim of Lien, Exhibit C3 which has not been released pursuant to Partial Release #2008062560 is "non-golf course" property. See also Exhibit Cheney C.

²² See ¶ 13, *supra*; see also Exhibit Cheney D.

²³ See ¶¶ 15-19, *supra*; see also Exhibit Cheney E.

²⁴ As stated in paragraph 17.f. through 16.g., *supra*, and as is exhibited by Exhibit Cheney E, parcel 12 contains two (2) residential subdivisions which are non-golf course property. The residential subdivisions extend into Parcels 11 and 14.


²⁵ See ¶¶ 20-21, *supra*.

²⁶ See ¶ 22, *supra*; see also Exhibit Cheney F.

²⁷ See ¶22.a., *supra*; see also Exhibit Cheney F. By way of clarification, while the senior interests referenced in paragraph 22.a. do not encumber the portion of Parcel 12 upon which Circling Raven subdivision is located, see Exhibit Cheney F; as noted in paragraph 17.g., *supra*, that portion is a residential subdivision which is not golf course property.

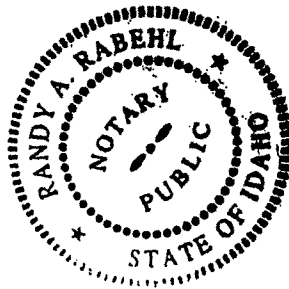
FURTHER YOUR AFFIANT SAITH NAUGHT.

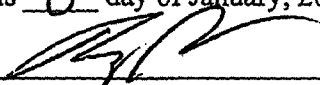
DATED this 8th day of January, 2009.



HOPE CHENEY

SUBSCRIBED AND SWORN to before me this 8 day of January, 2009.





Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: 4/30/09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th of January, 2009, a true and correct copy of the above and foregoing document was *sent via U.S. Mail, postage prepaid* and addressed as follows in the manner stated below:

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Robert A. Faucher
Sarah E. Davis
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Attorney for Plaintiff

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Attorney for Gregory & Jeanette Bullock

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1513 Tyrell Lane, Suite 130
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Attorney for Hunter's Point Development Corp.

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Attorney for Advanced Concrete & Beus Excavation

Terrence R. White
White Peterson, P.A.
5700 E. Franklin Road, Suite 200
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Attorney for The City of Nampa, Idaho

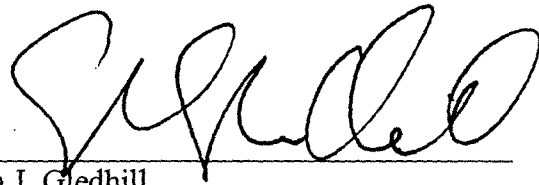
Randall A. Peterman
David B. Lincoln
Moffatt Thomas Barrett Rock & Fields Chtd.
101 S. Capitol Blvd. 10th Fl.
P.O. Box 829
Boise, ID 83701-0829
Attorney for Bank of the Cascades

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
877 W. Main St., Ste 1000
P.O. Box 1617
Boise, ID 83701
Attorney for 2MD, Inc.

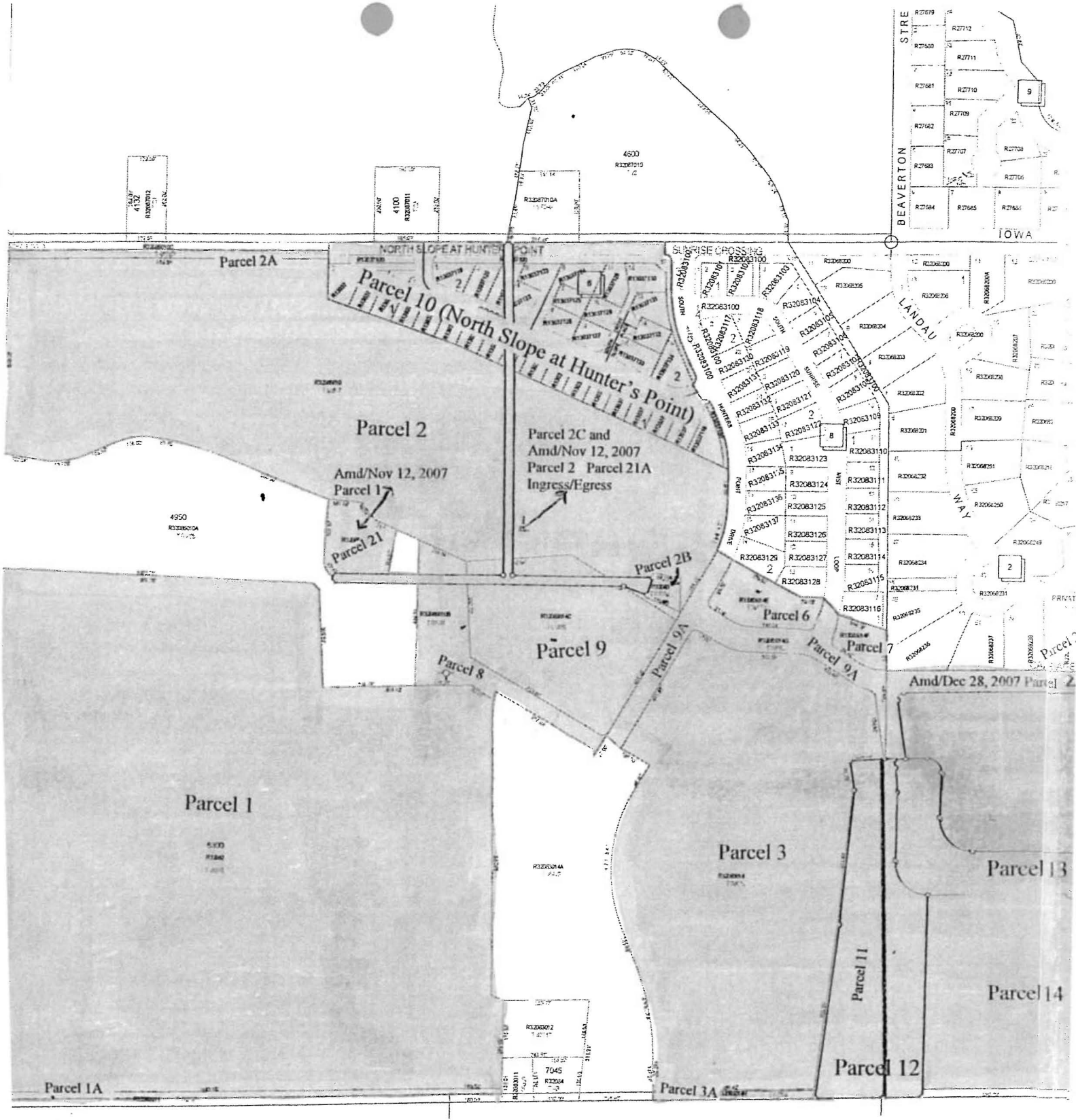
Michaelina B. Murphy
Murphy Law Office, PLLC
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P.O. Box 490
Meridian, ID 83680-0409
Attorney for Build 4 U, Inc.

Robert A. Anderson
Robert A. Mills
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C.W. Moore Plaza
250 South Fifth Street, Suite 700we
P.O. Box 7426
Boise, ID 83707-7426
Attorney for Mason & Stanfield, Inc.

Terry Michaelson, Esq.
Hamilton, Michaelson & Hilty, LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, ID 83683-0065
*Attorney for Edward D. Shank and
Grace Shank; The Shober Family
Limited Partnership*



Stephen J. Gledhill

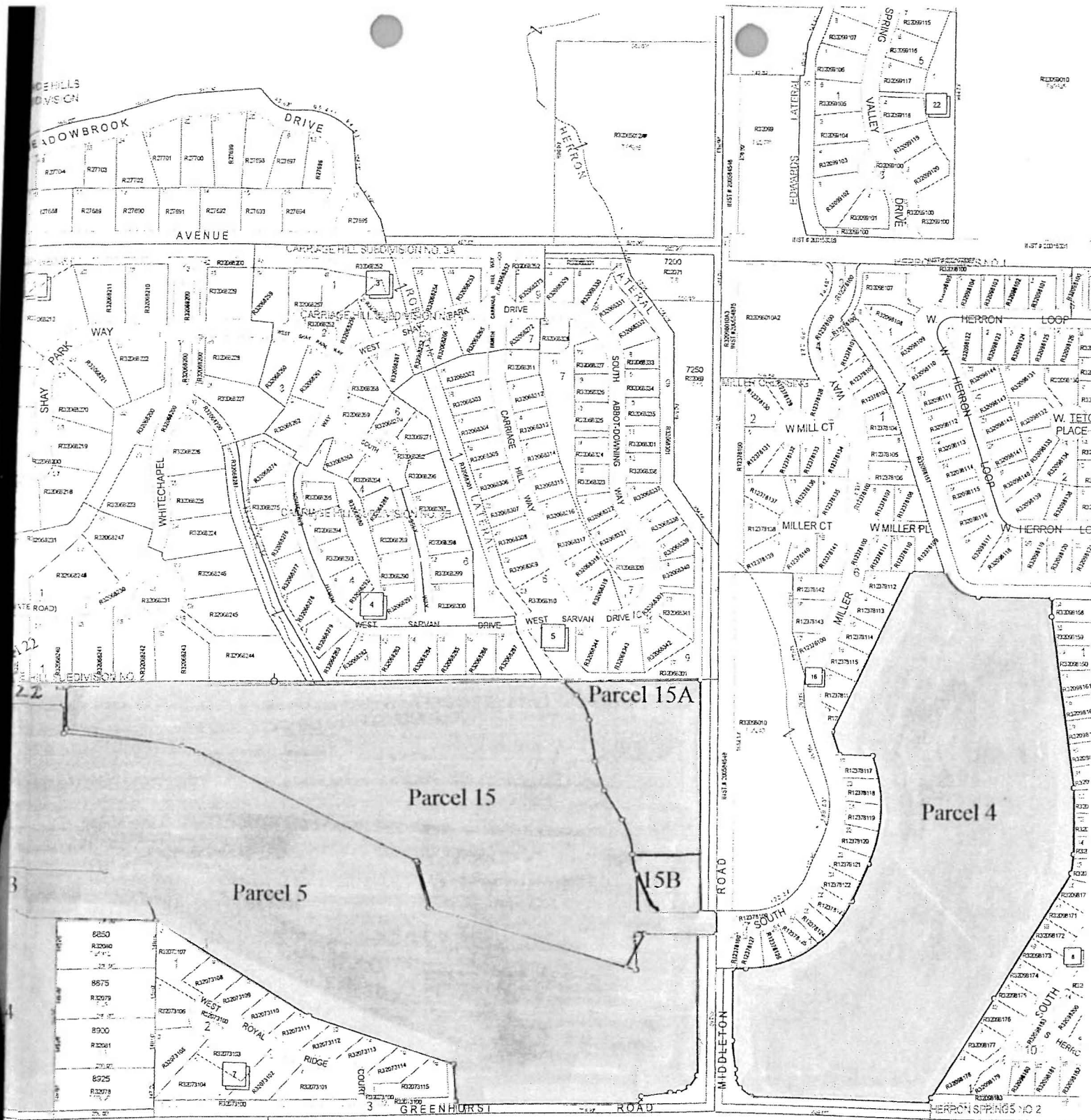


Southwest Quarter Section 31 3N 2W

1 inch = 400'

Exhibit "Cheney A"

901



















Southeast Quarter Section 31 3N 2W ————— West half Southwest Quarter Section



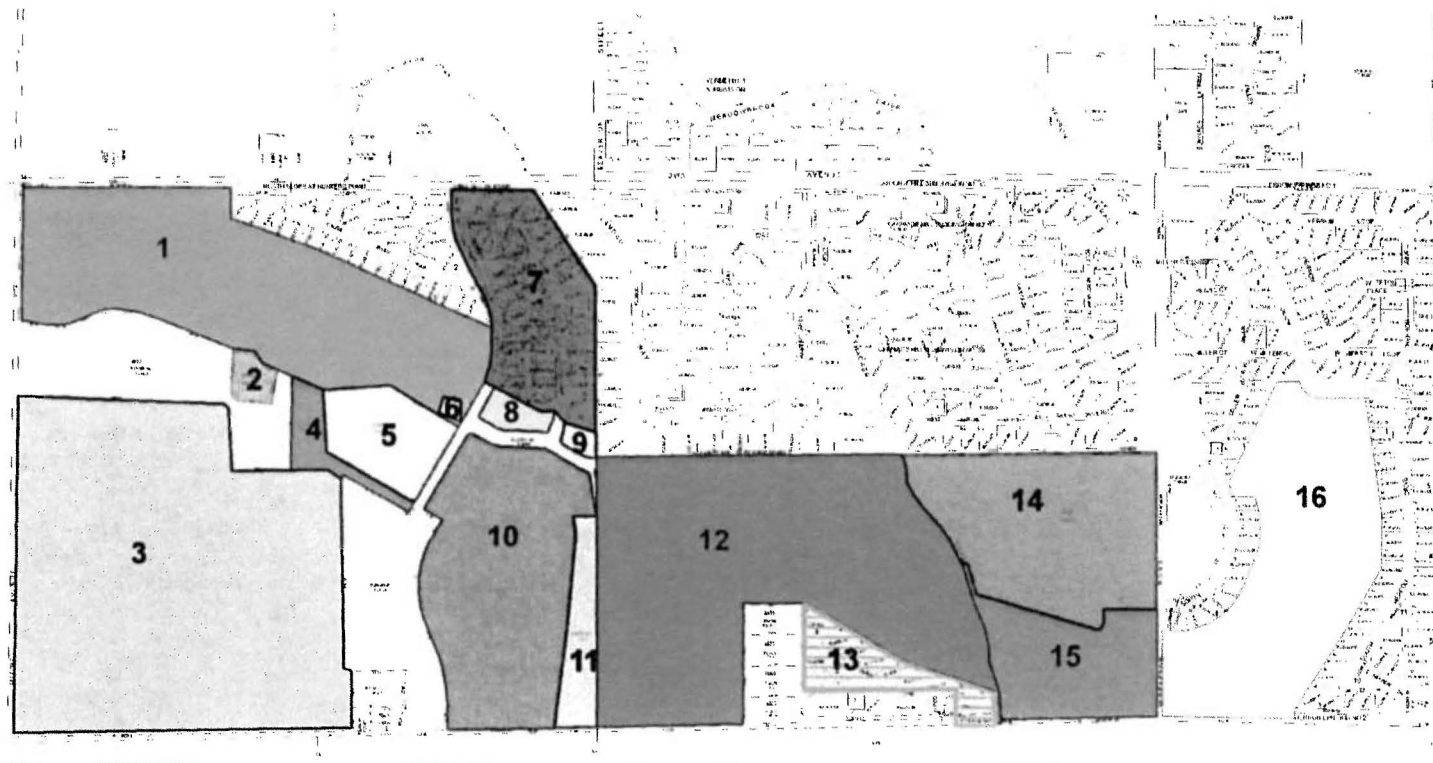
Parcels Subject to LU's Lien as Originally Recorded

Legend

-  (1) R32086010
-  (2) R32086
-  (3) R32082
-  (4) R32086010B
-  (5) R32083014C
-  (6) R32083
-  (7) Sunrise Crossing
-  (8) R32083014E
-  (9) R32083014F
-  (10) R32083014
-  (11) R32083014D
-  (12) R32073
-  (13) Ptn Royal Ridge
-  (14) R32072
-  (15) R32072010
-  (16) R32098010B

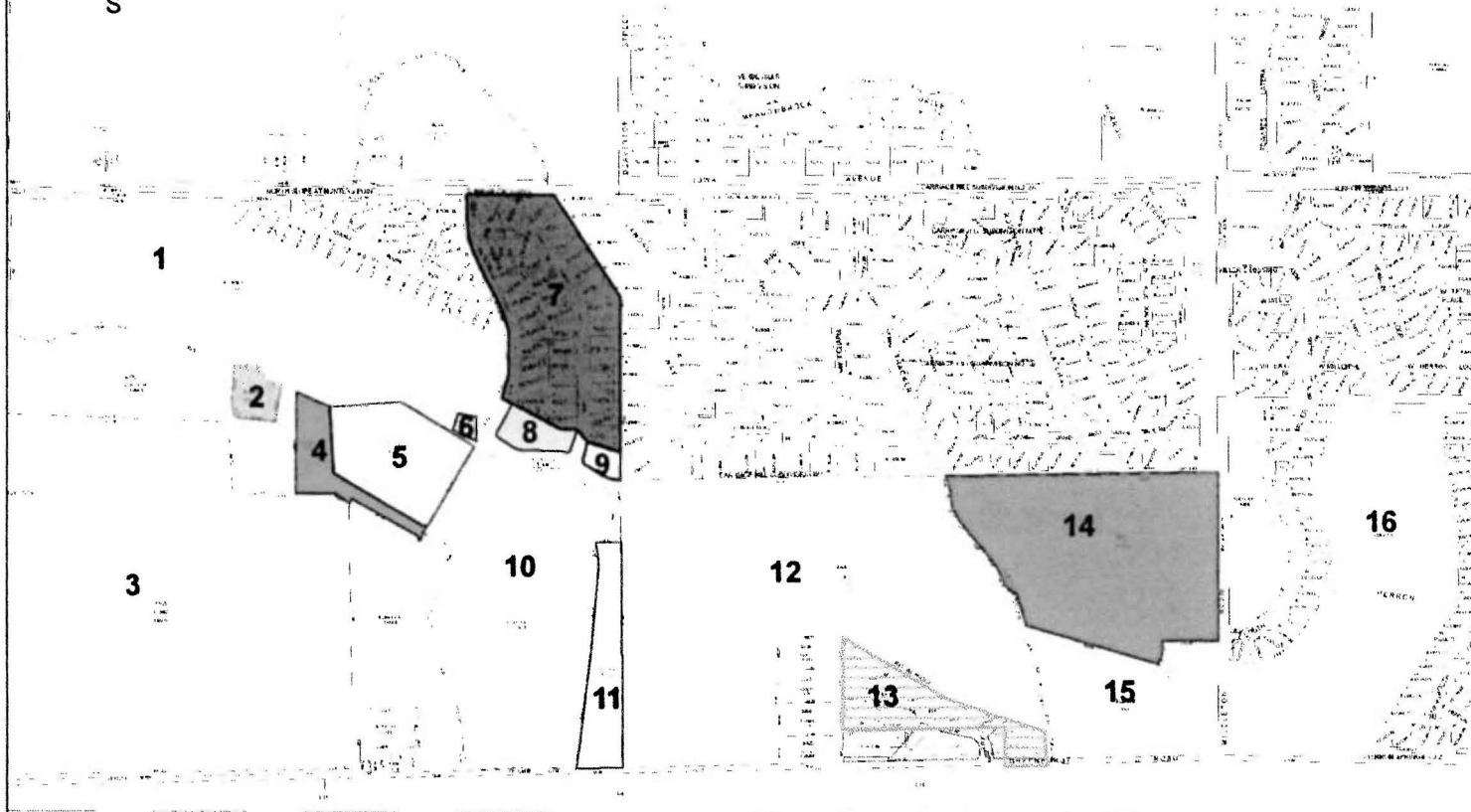


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903

904



Parcels Not Subject to LU's Requested PSJ Relief

Legend

- (2) R32086
- (4) R32086010B
- (5) R32083014C
- (6) R32083
- (7) Sunrise Crossing
- (8) R32083014E
- (9) R32083014F
- (11) R32083014D
- (13) Ptn Royal Ridge
- Partial Release
#2008062560
- (14) R32072

(3) Categories of Parcels:

"Released Parcels": Release recorded by LU Instrument #2008062560

"Specifically Abandoned Parcels": 4, 5, 6, 8 and 9

"Omitted Parcels": 2, 7, 11, 13 and 14









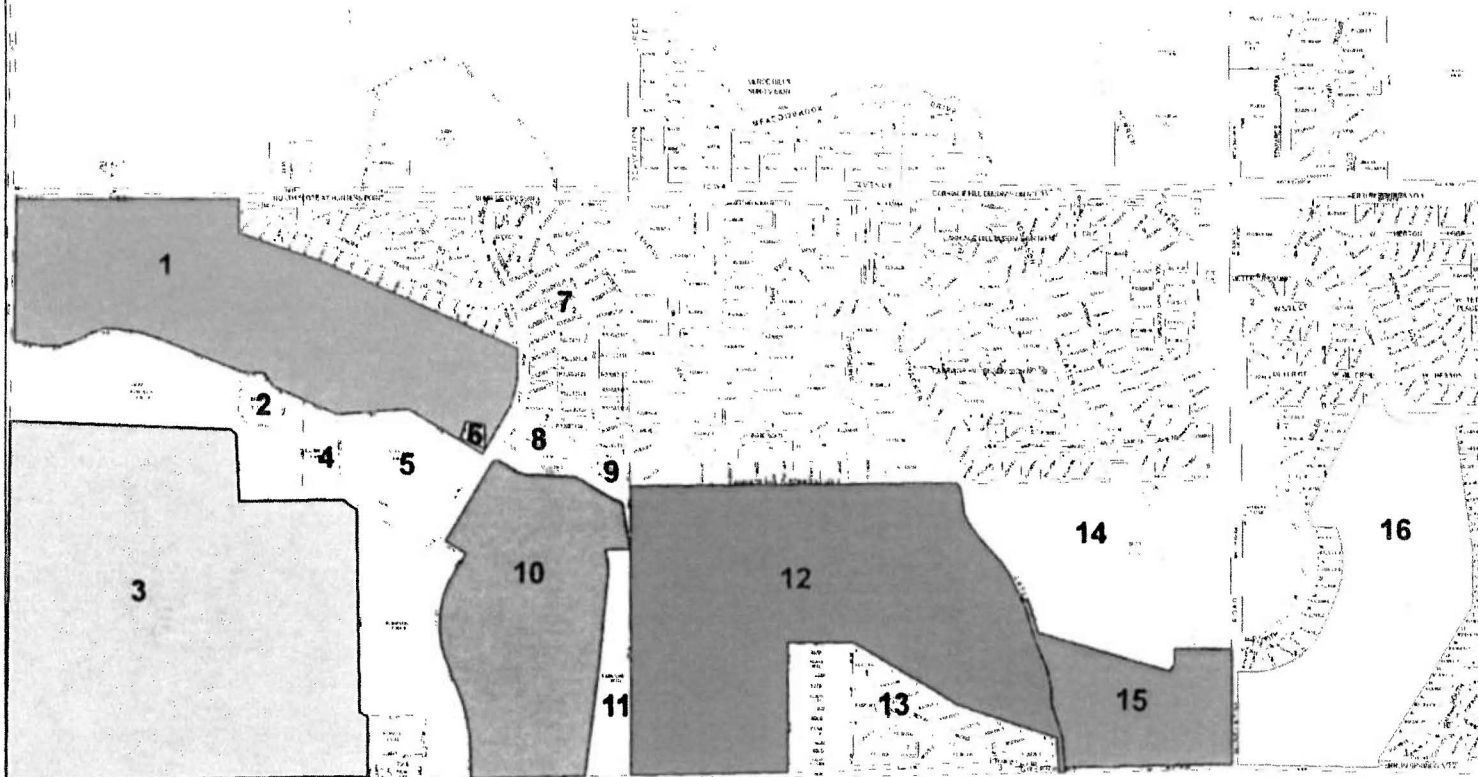
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Parcels Subject to LU's Requested PSJ Relief

Legend

-  (1) R32086010
-  (3) R32082
-  (10) R32083014
-  (12) R32073
-  (15) R32072010
-  (16) R32098010B















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905



Non-Golf Course Property Encumbered by LU Lien

Legend

-  (2) R32086
-  (4) R32086010B
-  (5) R32083014C
-  (6) R32083
-  (7) Sunrise Crossing
-  (8) R32083014E
-  (9) R32083014F
-  (11) R32083014D
-  (12a) Ptn of 12 within
Proposed Circling Raven
-  (12b) Ptn of 12 within
Proposed Elk Basin
-  (13) Ptn Royal Ridge
-  (14) R32072

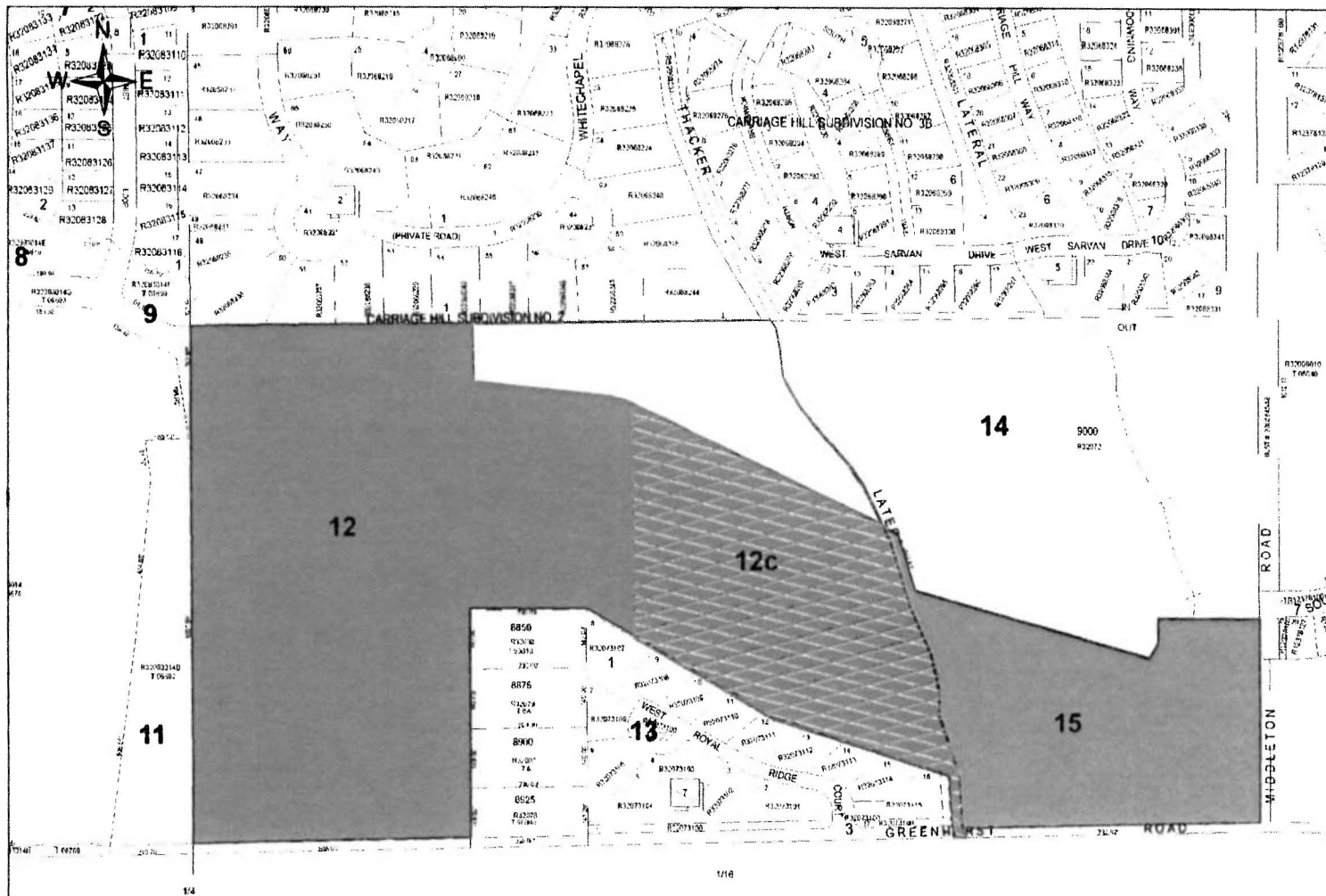


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906

907

Exhibit "Cheney F"



Parcels Upon Which LU Does Not Have a Senior Lien Interest

Legend

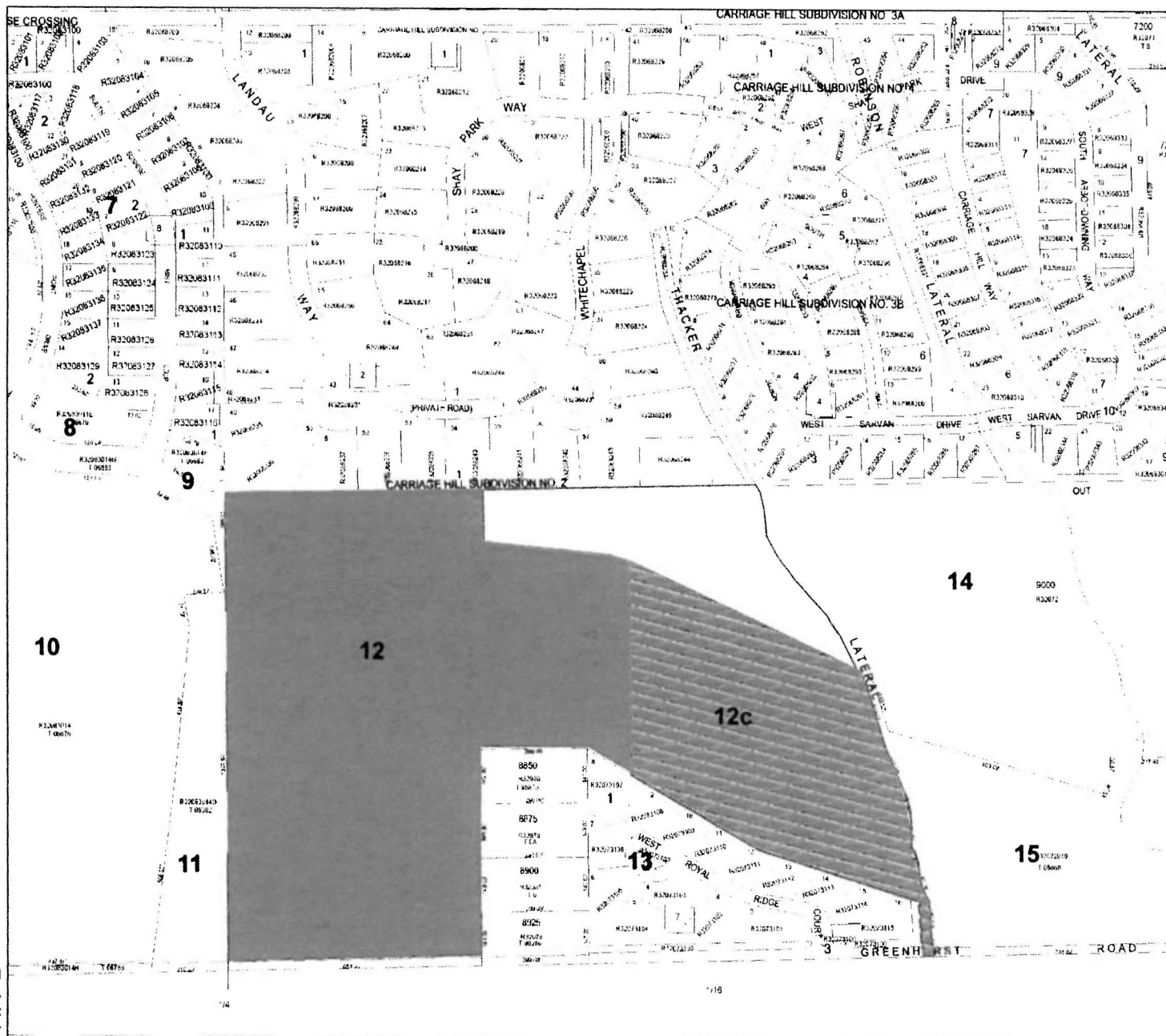
- (12) Senior Trustees Deed Instrument 2008049956
- (15) Senior DOT Instrument 200575083
- (12c) Senior DOT Instrument 200574022



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Exhibit "Cheney G"



Ownership of Parcel 12



Legend

- (12)
Hopkins HP Elk Basin LL
Senior Trustees Deed
Instrument 2008049956
- (12c)
Gregory O & Jeanette
Bullock Senior DOT
Instrument 200574022



This map may or may not be a survey of the land depicted hereon. You should not rely upon it for any purpose other than orientation to the general location of the parcel or parcels depicted. TitleOne expressly disclaims any liability for alleged loss or damage which may result from reliance upon this map.

TitleOne Corporation
1101 W. River Street, Ste 201
Boise, Idaho 83702
(208) 424-8511
Order No.: TS0800468

2008 JUN 25 PM 4 12
RECORDED
WILLIAM H. HURST
SANDY COUNTY RECORDER
BY [Signature]
TITLEONE
FIRST CLASS
POSTAGE & FEE PAID
[Signature]

2008034604

AFFIDAVIT OF SERVICE BY MAIL

I, Amy L. Wilcoxson, the undersigned, being first duly sworn, deposes and says that I am a citizen of the United States, over eighteen (18) years of age, a resident of Ada County, State of Idaho, and not a party to the proceedings referred to in the attached Notice of Trustee's Sale and Notice of Default; that my business address is TitleOne Corporation, 1101 River Street, Suite 201, Boise, Idaho 83702.

In accordance with Idaho Code, Section 45-1506(2), I served a copy of said attached Notice of Trustee's Sale and Notice of Default by placing said copies in an envelope which was then sealed and postage fully prepaid thereof for registered and/or certified mail, return receipt requested, and was deposited in a United States Post Office in Boise, Idaho, on April 28, 2008 addressed to the following:

See Attached Exhibit

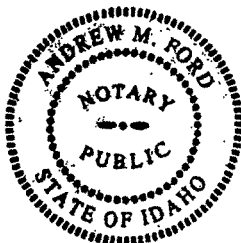
Dated: June 18, 2008

[Signature of Amy L. Wilcoxson]

State of Idaho
County of Ada

On this 24th day of June, 20 08, before me, the undersigned a Notary Public in and for said state personally appeared Amy L. Wilcoxson, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same. IN WITNESS WHEREOF I have set my hand and official seal on the date shown above.

[Signature]
Notary Public
Residing at: Boise
My commission expires on: 1/4/2012



TITLEONE CORPORATION
CERTIFIED MAILING ADDRESSES
FILE NO.: TS0800468

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Nampa, Idaho 83686

Jeanette E. Bullock
304 Bayhill Drive
Nampa, Idaho 83686

Gregory O. Bullock
504 Bayhill Drive
Nampa, Idaho 83686

Jeanette E. Bullock
504 Bayhill Drive
Nampa, Idaho 83686

Hopkins Financial Services, Inc.
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Richard B. Eismann
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3016 Caldwell Blvd.
Nampa, Idaho 83651

Hopkins Northwest Fund, LLC
P.O. Box 670
Meridian, Idaho 83680

Hunter's Point Development
Corporation
504 Bayhill Drive
Nampa, Idaho 83686

Hunter's Point Golf Community,
LLC
504 Bayhill Drive
Nampa, Idaho 83686

John R. Goodell
Racine, Olson, Nye, Budge &
Bailey Chartered
P.O. Box 1391
Pocatello, Idaho 83204

Joshua D. Johnson
Racine, Olson, Nye, Budge &
Bailey Chartered
P.O. Box 1391
Pocatello, Idaho 83204

Landscapes Unlimited, LLC
11479 Saranac Street
Caldwell, Idaho 83605

TITLEONE CORPORATION
CERTIFIED MAILING ADDRESSES
FILE NO.: TS0800468

Landscapes Unlimited, LLC
1201 Aries Drive
Lincoln, Nebraska 68512

Lanco, Inc.
% Richard W. Mollerup
Mueleman Mollerup LLP
755 W Front St., Suite 200
Boise, Idaho 83702

Lanco, Inc.
4152 East Amity Road, #101
Nampa, Idaho 83687

Mason and Stanfield, Inc.
314 Badiola Street
Caldwell, Idaho 83605



(208) 424-8511

Order No.: TS0800468

RESCHEDULED NOTICE OF TRUSTEE'S SALE

On the 26th day of August, 2008, at the hour of 10:00 a.m. of this day (recognized local time), in the office of TitleOne Corporation, 5660 E. Franklin Road, Suite 101, Nampa, Idaho 83687, in the County of Ada, State of Idaho, TitleOne Corporation, an Idaho corporation, as trustee, will sell at public auction to the highest bidder, for cash or cashier's check (cash equivalent), in lawful money of the United States, all payable at the time of sale in compliance with Section 45-1506(9) Idaho Code, the following described real property, situated in Ada County, State of Idaho, and described as follows to wit:

See Attached Exhibit A

The Trustee has no knowledge of a more particular description of the above referenced real property, but for purposes of compliance with Section 60-113, Idaho Code, the Trustee has been informed that according to the County Assessors office, the address of TBD W. Greenhurst Road, Nampa, ID, 83686, is sometimes associated with said real property.

Said sale will be made without covenant or warranty regarding title, possession, or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in the Deed of Trust executed by Gregory O. Bullock and Jeanette E. Bullock, husband and wife, as Grantor(s), to TitleOne Corporation, an Idaho corporation, as trustee, and The Schober Family Limited Partnership, as Beneficiary, recorded November 4, 2005, as Instrument No. 200574023, in the records of Ada County, Idaho.

THE ABOVE GRANTORS ARE NAMED TO COMPLY WITH SECTION (45-1506)(4)(A), IDAHO CODE. NO REPRESENTATION IS MADE THAT THEY ARE, OR ARE NOT, PRESENTLY RESPONSIBLE FOR THIS OBLIGATION.

The default for which this sale is to be made is the failure to pay when due, under Deed of Trust Note, the entire loan balance immediately due and payable in the amount of \$541,380.00, for Principal, due and payable on or before February 28, 2008, with unpaid accrued interest owing in the amount of \$37,896.60, at the rate of 7% per annum. All amounts are now due, together with unpaid and accruing taxes, assessments, trustee's fees, attorney's fees, costs and advances made to protect the security associated with this foreclosure and that the beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation.

Dated: April 24, 2008

TITLEONE CORPORATION

Trustee

By: Amy L. Wilcoxson

Trust Officer

Exhibit A (1 of 4)

A parcel of land being a portion of the South half of the Southeast quarter of Section 31, Township 3 North, Range 2 West Boise Meridian, Canyon County Idaho, more particularly described as follows:

Commencing at the Southeast corner of said South half of the Southeast quarter (Section corner common to Sections 31, 32, 5 and 6), said corner monumented with a 3 inch diameter brass disk; thence

South 88°43'44" West, a distance of 734.82 feet along the Southerly boundary of said South half of the Southeast quarter to the POINT OF BEGINNING, said point being on the approximate centerline of the Thacker Lateral; thence continuing

South 88°43'44" West, a distance of 931.32 feet along the Southerly boundary of said South half of the Southeast quarter to a 5/8 inch diameter iron pin; thence leaving the Southerly boundary of said South half of the Southeast quarter,

North 0°17'14" West, a distance of 591.02 feet parallel with the Westerly boundary of said South half of the Southeast quarter to a 5/8 inch iron pin; thence

South 89°42'46" West, a distance of 290.00 feet to a 5/8 inch diameter iron pin; thence

South 0°17'14" East a distance of 596.00 feet parallel with the Westerly boundary of said South half of the Southeast quarter to a point on the Southerly boundary of said South half of the Southeast quarter, said point is monumented with a 5/8 inch diameter iron pin; thence

South 88°43'44" West, a distance of 688.00 feet along the

Southerly boundary of said South half of the Southeast quarter to the Southwest corner of said South half of the Southeast quarter (South quarter corner Section 31), said corner is monumented with a 5/8 inch diameter iron pin; thence

North 0°17'14" West, a distance of 1303.45 feet along the Westerly boundary of said South half of the Southeast quarter to the Northwest corner of said South half of the Southeast quarter (CS 1/16 corner Section 31), said corner is monumented with a 5/8 inch diameter iron pin; thence

North 88°59'36" East, a distance of 1442.76 feet along the Northerly boundary of said South half of the Southeast quarter to a point on the approximate centerline of said Thacker Lateral; thence along the approximate centerline of said Thacker Lateral the following courses and distances: thence

South 32°04'37" East a distance of 24.80 feet to a point; thence

South 11°24'29" East, a distance of 49.64 feet to a point; thence

South 06°12'17" East, a distance of 70.71 feet to a point; thence

South 27°56'10" East, a distance of 62.47 feet to a point; thence

South 36°42'51" East, a distance of 75.33 feet to a point; thence

South 40°54'19" East, a distance of 136.58 feet to the beginning of a tangent curve right and having a radius of 250.00 feet; thence a distance of 63.19 feet along the arc of said curve through a central angle of 14°28'59", the long chord of which bears South 33°39'49" East, a distance of 63.03 feet to a point; thence tangent to said curve

South 26°25'20" East, a distance of 143.67 feet to a point; thence

South 16°33'03" East, a distance of 179.74 feet to a point; thence

South 22°32'37" East, a distance of 126.74 feet to the beginning of a tangent curve right and having a radius of 260.00 feet; thence a distance of 96.80 feet along the arc of said curve through a central angle of 21°19'50", the long chord of which bears South 11°52'41" East, a distance of 96.24 feet to a point; thence tangent to said curve,

South 01°12'46" East, a distance of 64.48 feet to the beginning of a tangent curve left and having a radius of 125.00 feet; thence a distance of 69.14 feet along the arc of said curve through a central angle of 31°41'23", the long chord of which bears South 16°58'38" East, a distance of 68.26 feet to the beginning of a reverse curve right having a radius of 165.00 feet; thence a distance of 84.71 feet along the arc of said curve through a central angle of 29°24'53" the long chord of which bears South 18°06'54" East, a distance of 83.78 feet; thence tangent to said curve, South 03°24'12" East, a distance of 110.36 feet to a point; thence

South 08°03'50" East, a distance of 43.90 feet to the POINT OF BEGINNING.

Exhibit A (2 of 4)

Excepting Therefrom the following described tracts:

Tract 1

This parcel is situated in the Southeast quarter of Section 31 Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence
East along the South boundary said Southeast quarter, a distance of 1545.64 feet the TRUE POINT OF BEGINNING; thence
North 1°09'00" East, a distance of 175.00 feet; thence
East along a line parallel to the said South boundary a distance of 150.00 feet; thence
South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence
West along said South boundary a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

TRACT 2:

This parcel situated in the Southeast quarter of Section 31 Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence
East along the South boundary of said Southeast quarter, a distance of 1185.64 feet to the TRUE POINT OF BEGINNING; thence
North 1°09'00" East, a distance of 175.00 feet; thence
East along a line parallel with said South boundary, a distance of 150.00 feet; thence
South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence
West along said South boundary a distance of 150.00 feet to the TRUE POINT OF BEGINNING

Tract 3:

This parcel is situated in the Southeast quarter of Section 31, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence
East along the South boundary of said Southeast quarter a distance of 975.64 feet to the TRUE POINT OF BEGINNING; thence;
North 1°09'00" East a distance of 175.00 feet; thence
East along a line parallel with the South boundary of said Southeast quarter a distance of 210.00 feet; thence
South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence
West along said South boundary a distance of 210.00 feet to the TRUE POINT OF BEGINNING.

Tract 4:

This parcel is situated in the Southeast quarter of Section 31, Township 3 North, Range 2 West of the Boise Meridian, Canyon County Idaho, and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence
East along the South boundary of said Southeast quarter a distance of 1335.64 feet to the TRUE POINT OF BEGINNING; thence
North 1°09'00" East a distance of 175.00 feet; thence
East along a line parallel with said South boundary, a distance of 210.00 feet; thence
South 1°09'00" West a distance of 175.00 feet to a point on said South boundary; thence
West along said South boundary a distance of 210.00 feet to the TRUE POINT OF BEGINNING.

Exhibit A (3 of 4)

Tract 5:

A parcel of land being a portion of the South half of the Southeast quarter of Section 31, Township 3 North, Range 2 West, Boise Meridian Canyon County Idaho, more particularly described as follows:

Commencing at the Southeast corner of said South half of the Southeast quarter (section corner common to Sections 31, 32, 5 and 6) said corner monumented with a 3 inch diameter brass disk; thence South 85°43'44" West a distance of 734.82 feet along the Southerly boundary of said South half of the Southeast quarter to the POINT OF BEGINNING, said point being on the approximate centerline of the Thacker Lateral; thence continuing South 88°43'44" West a distance of 25.18 feet along the Southerly boundary of said South half of the Southeast quarter to a point on the Westerly right of way of the Thacker Lateral; thence along the Westerly right of way of said Thacker Lateral the following courses and distances: thence North 08°03'50" West, a distance of 41.94 feet to a point; thence North 03°24'12" West, a distance of 110.84 feet to a point; thence leaving the Westerly right of way of said Thacker Lateral; North 71°47'43" West, a distance of 456.37 feet to a point; thence North 59°10'46" West, a distance of 403.15 feet to a point; thence North 00°15'32" West, a distance of 581.78 feet to a point; thence South 72°49'42" East a distance of 2.37 feet to a point; thence South 64°06'42" East, a distance of 690.64 feet to a point on the approximate centerline of the Thacker Lateral; thence along the approximate centerline of said Thacker Lateral the following courses and distances: thence South 26°25'20" East, a distance of 37.67 feet to a point; thence South 16°33'03" East, a distance of 179.74 feet to a point; thence South 22°32'37" East a distance of 126.74 feet to the beginning of a tangent curve right; thence a distance of 96.80 feet along the arc of said curve, having a radius of 260.00 feet, a central angle of 21°19'50", the long chord of which bears South 11°52'41" East a distance of 96.24 feet to a point; thence tangent to said curve, South 01°12'46" East, a distance of 64.48 feet to the beginning of a non tangent curve left; thence a distance of 69.14 feet along the arc of said curve having a radius of 125.00 feet, a central angle of 31°41'23", the long chord of which bears South 16°58'38" East, a distance of 68.26 feet to the beginning of a reverse curve right; thence a distance of 84.71 feet along the arc of said reverse curve, having a radius of 165.00 feet a central angle of 29°24'53", the long chord of which bears South 18°06'54" East, a distance of 83.78 feet to a point; thence non tangent to said curve, South 03°24'12" East, a distance of 110.36 feet to a point; thence South 08°03'50" East a distance of 43.90 feet to the POINT OF BEGINNING.

Tract 6

This parcel of land is a portion of the South half of the Southeast quarter of Section 31, Township 3 North Range 2 West, Boise Meridian, Canyon County Idaho, more particularly described as follows:

Exhibit A (4 of 4)

Commencing at the Southeast corner of said South half of the Southeast quarter (section corner common to Sections 31 and 32 in Township 3 North, Range 2 West and Sections 5 and 6 in Township 2 North, Range 2 West), said corner monumented with a 3-inch diameter brass disk; thence North 00°15'31" West, a distance of 541.80 feet along the Easterly boundary or said South half of the Southeast quarter to a 5/8 inch diameter iron pin; thence South 89°44'29" West, a distance of 234.64 feet perpendicular to the Easterly boundary of said South half of the Southeast quarter to a 5/8 inch diameter iron pin; thence South 01°41'19" East, a distance of 119.40 feet to a 5/8 inch diameter iron pin; thence North 73°38'00" West, a distance of 642.74 feet to a point on the Easterly right of way of the Thacker Lateral, said point monumented with a 5/8 inch diameter iron pin; thence North 16°33'03" West, a distance of 142.83 feet along the Easterly right of way of said Thacker Lateral to a 5/8 inch diameter iron pin; thence North 26°25'20" West, a distance of 7.47 feet along the Easterly right of way of said Thacker Lateral to a 5/8 inch diameter iron pin; thence leaving the Easterly right of way of said Thacker Lateral, North 64°06'42" West, a distance of 40.89 feet to a point on the centerline of the said Thacker Lateral and being the POINT OF BEGINNING; thence leaving said centerline of the Thacker Lateral and continuing North 64°06'42" West a distance of 690.64 feet to a 5/8 inch diameter iron pin; thence North 72°49'42" West, a distance of 52.13 feet to a 5/8 inch diameter iron pin; thence North 84°06'56" West, a distance of 343.87 feet to a 5/8 inch diameter iron pin; thence North 01°00'24" West, a distance of 141.00 feet to a point on the North boundary of said South half of the Southeast quarter monumented with a 5/8 inch diameter iron pin; thence North 88°59'36" East, a distance of 739.33 feet along said Northerly boundary of said South half of the Southeast quarter to a point on the centerline of Thacker Lateral; thence along said centerline the following courses and distances; thence South 32°04'37" East, a distance of 24.80 feet to a point; thence South 11°24'29" East, a distance of 49.64 feet to a point; thence South 06°12'17" East, a distance of 70.71 feet to a point; thence South 27°56'10" East, a distance of 62.47 feet to a point; thence South 36°42'51" East, a distance of 75.33 feet to a point; thence South 40°54'19" East, a distance of 136.58 feet to a point; thence along an arc to the right having a radius of 250.00 feet, a central angle of 14°28'59", the long chord of which bears South 33°39'49" East, a distance of 63.03 feet to a point; thence South 26°25'20" East, a distance of 106.01 feet to the POINT OF BEGINNING.

Tract 7:

Any portion lying within Royal Ridge at Hunter's Point Planned Unit Development "A Golf Community" recorded in Book 38 of Plats at Page 3, records of Canyon County, Idaho.

SA 40



(208) 424-8511
Order No.: TS0800468

2008 MAR 24 PM 4 18
WILLIAM H. HURST
CANYON COUNTY RECORDER
BY: *[Signature]*

RECORDED

2008016150

TITLEONE

REQUEST
TYPE: *[initials]*
FEE: *[initials]*

NOTICE OF DEFAULT

*re-recorded to correct legal description

The Schober Family Limited Partnership, Beneficiary, under that certain Deed of Trust executed by Gregory O. Bullock and Jeanette E. Bullock, husband and wife, as Grantor(s), to TitleOne Corporation, an Idaho corporation, as trustee, recorded November 4, 2005, as Instrument No. 200574823 in the records of Ada County, Idaho, to wit:

See Attached Exhibit A

The beneficiary hereby gives notice that a breach of obligation for which said transfer in security has occurred, the nature of the breach being:

Failure to pay when due, under Deed of Trust Note, the entire loan balance immediately due and payable in the amount of \$541,380.00, for Principal, due and payable on or before February 28, 2008, with unpaid accrued interest owing in the amount of \$37,896.60, at the rate of 7% per annum. All amounts are now due, together with unpaid and accruing taxes, assessments, trustee's fees, attorney's fees, costs and advances made to protect the security associated with this foreclosure and all are accruing until the date of sale, or full satisfaction of the obligation.

Therefore, the Beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation.

Dated: 3/20/08

CONFORMED COPY

Recorded: April 24, 2008

Instrument No. 2008022606

The Schober Family Limited Partnership

[Signature]
By: Wesley R. Schober
Its: General Partner

State of Idaho
County of Canyon

On this 26 day of March, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Wesley R. Schober known or identified to me to be the General Partner of the partnership that executed the instrument and acknowledged to me that executed the same for and on behalf of said partnership and that said partnership executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above written.

[Signature]
Notary Public
Commission Expires: Nov. 7, 2012



Exhibit A (1 of 2)

A parcel of land being a portion of the South half of the Southeast quarter of Section 31, Township 3 North, Range 2 West Boise Meridian, Canyon County Idaho, more particularly described as follows:

Commencing at the Southeast corner of said South half of the Southeast quarter (Section corner common to Sections 31, 32, 5 and 6), said corner monumented with a 3 inch diameter brass disk; thence
South 88°43'44" West, a distance of 734.82 feet along the Southerly boundary of said South half of the Southeast quarter to the POINT OF BEGINNING, said point being on the approximate centerline of the Thacker Lateral; thence continuing
South 88°43'44" West, a distance of 931.32 feet along the Southerly boundary of said South half of the Southeast quarter to a 5/8 inch diameter iron pin; thence leaving the Southerly boundary of said South half of the Southeast quarter,
North 0°17'14" West, a distance of 591.02 feet parallel with the Westerly boundary of said South half of the Southeast quarter to a 5/8 inch iron pin; thence
South 89°42'46" West, a distance of 290.00 feet to a 5/8 inch diameter iron pin; thence
South 0°17'14" East a distance of 596.00 feet parallel with the Westerly boundary of said South half of the Southeast quarter to a point on the Southerly boundary of said South half of the Southeast quarter, said point is monumented with a 5/8 inch diameter iron pin; thence
South 88°43'44" West, a distance of 688.00 feet along the
Southerly boundary of said South half of the Southeast quarter to the Southwest corner of said South half of the Southeast quarter (South quarter corner Section 31), said corner is monumented with a 5/8 inch diameter iron pin; thence
North 0°17'14" West, a distance of 1303.45 feet along the Westerly boundary of said South half of the Southeast quarter to the Northwest corner of said South half of the Southeast quarter (CS 1/16 corner Section 31), said corner is monumented with a 5/8 inch diameter iron pin; thence
North 88°59'36" East, a distance of 1442.76 feet along the Northerly boundary of said South half of the Southeast quarter to a point on the approximate centerline of said Thacker Lateral; thence along the approximate centerline of said Thacker Lateral the following courses and distances: thence
South 32°04'37" East a distance of 24.80 feet to a point; thence
South 11°24'29" East, a distance of 49.64 feet to a point; thence
South 06°12'17" East, a distance of 78.71 feet to a point; thence
South 27°56'10" East, a distance of 62.47 feet to a point; thence
South 36°42'51" East, a distance of 75.33 feet to a point; thence
South 40°54'19" East, a distance of 136.58 feet to the beginning of a tangent curve right and having a radius of 250.00 feet; thence a distance of 63.19 feet along the arc of said curve through a central angle of 14°28'59", the long chord of which bears South 33°39'49" East, a distance of 63.03 feet to a point; thence tangent to said curve
South 26°25'20" East, a distance of 143.67 feet to a point; thence
South 16°33'03" East, a distance of 179.74 feet to a point; thence
South 22°32'37" East, a distance of 126.74 feet to the beginning of a tangent curve right and having a radius of 260.00 feet; thence a distance of 96.80 feet along the arc of said curve through a central angle of 21°19'50", the long chord of which bears South 11°52'41" East, a distance of 96.24 feet to a point; thence tangent to said curve,
South 01°12'46" East, a distance of 64.48 feet to the beginning of a tangent curve left and having a radius of 126.00 feet; thence a distance of 69.14 feet along the arc of said curve through a central angle of 31°41'23", the long chord of which bears South 16°58'38" East, a distance of 68.26 feet to the beginning of a reverse curve right having a radius of 165.00 feet; thence a distance of 84.71 feet along the arc of said curve through a central angle of 29°24'53" the long chord of which bears South 18°06'54" East, a distance of 83.78 feet; thence tangent to said curve, South 03°24'12" East, a distance of 110.36 feet to a point; thence
South 08°03'50" East, a distance of 43.90 feet to the POINT OF BEGINNING.

Exhibit A (2 of 2)

Excepting Therefrom the following described tracts:

Tract 1

This parcel is situated in the Southeast quarter of Section 31 Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary said Southeast quarter, a distance of 1545.64 feet the TRUE POINT OF BEGINNING; thence North 1°09'00" East, a distance of 175.00 feet; thence East along a line parallel to the said South boundary a distance of 150.00 feet; thence South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence West along said South boundary a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

TRACT 2:

This parcel situated in the Southeast quarter of Section 31 Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary of said Southeast quarter, a distance of 1185.64 feet to the TRUE POINT OF BEGINNING; thence North 1°09'00" East, a distance of 175.00 feet; thence East along a line parallel with said South boundary, a distance of 150.00 feet; thence South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence West along said South boundary a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

Tract 3:

This parcel is situated in the Southeast quarter of Section 31, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary of said Southeast quarter a distance of 975.64 feet to the TRUE POINT OF BEGINNING; thence; North 1°09'00" East a distance of 175.00 feet; thence East along a line parallel with the South boundary of said Southeast quarter a distance of 210.00 feet; thence South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence West along said South boundary a distance of 210.00 feet to the TRUE POINT OF BEGINNING.

Tract 4:

This parcel is situated in the Southeast quarter of Section 31, Township 3 North, Range 2 West of the Boise Meridian, Canyon County Idaho, and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary of said Southeast quarter a distance of 1335.64 feet to the TRUE POINT OF BEGINNING; thence North 1°09'00" East a distance of 175.00 feet; thence East along a line parallel with said South boundary, a distance of 210.00 feet; thence South 1°09'00" West a distance of 175.00 feet to a point on said South boundary; thence West along said South boundary a distance of 210.00 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "A"

PROPERTY DESCRIPTION

A parcel of land being a portion of the South half of the Southeast quarter of Section 31, Township 3 North, Range 2 West Boise Meridian, Canyon County Idaho, more particularly described as follows:

Commencing at the Southeast corner of said South half of the Southeast quarter (Section corner common to Sections 31, 32, 5 and 6), said corner monumented with a 3 inch diameter brass disk; thence South 88°43'44" West, a distance of 734.82 feet along the Southerly boundary of said South half of the Southeast quarter to the POINT OF BEGINNING, said point being on the approximate centerline of the Thacker Lateral; thence continuing South 88°43'44" West, a distance of 931.32 feet along the Southerly boundary of said South half of the Southeast quarter to a 5/8 inch diameter iron pin; thence leaving the Southerly boundary of said South half of the Southeast quarter, North 0°17'14" West, a distance of 591.02 feet parallel with the Westerly boundary of said South half of the Southeast quarter to a 5/8 inch iron pin; thence South 89°42'46" West, a distance of 290.00 feet to a 5/8 inch diameter iron pin; thence South 0°17'14" East a distance of 596.00 feet parallel with the Westerly boundary of said South half of the Southeast quarter to a point on the Southerly boundary of said South half of the Southeast quarter, said point is monumented with a 5/8 inch diameter iron pin; thence South 88°43'44" West, a distance of 888.00 feet along the Southerly boundary of said South half of the Southeast quarter to the Southwest corner of said South half of the Southeast quarter (South quarter corner Section 31), said corner is monumented with a 5/8 inch diameter iron pin; thence North 0°17'14" West, a distance of 1303.45 feet along the Westerly boundary of said South half of the Southeast quarter to the Northwest corner of said South half of the Southeast quarter (CS 1/16 corner Section 31), said corner is monumented with a 5/8 inch diameter iron pin; thence North 88°59'36" East, a distance of 1442.76 feet along the Northerly boundary of said South half of the Southeast quarter to a point on the approximate centerline of said Thacker Lateral; thence along the approximate centerline of said Thacker Lateral the following courses and distances: thence South 32°04'37" East a distance of 24.80 feet to a point; thence South 11°24'29" East, a distance of 49.64 feet to a point; thence South 06°12'17" East, a distance of 70.71 feet to a point; thence South 27°56'10" East, a distance of 82.47 feet to a point; thence South 38°42'51" East, a distance of 75.33 feet to a point; thence South 40°54'19" East, a distance of 136.58 feet to the beginning of a tangent curve right and having a radius of 250.00 feet; thence a distance of 63.19 feet along the arc of said curve through a central angle of 14°28'59", the long chord of which bears South 33°39'49" East, a distance of 63.03 feet to a point; thence tangent to said curve South 26°25'20" East, a distance of 143.67 feet to a point; thence South 16°33'03" East, a distance of 179.74 feet to a point; thence South 22°32'37" East, a distance of 126.74 feet to the beginning of a tangent curve right and having a radius of 260.00 feet; thence a distance of 96.80 feet along the arc of said curve through a central angle of 21°19'50", the long chord of which bears South 11°52'41" East, a distance of 96.24 feet to a point; thence tangent to said curve, South 01°12'46" East, a distance of 64.48 feet to the beginning of a tangent curve left and having a radius of 125.00 feet; thence a distance of 69.14 feet along the arc of said curve through a central angle of 31°41'23", the

EXHIBIT "A"

PROPERTY DESCRIPTION

(Continued)

long chord of which bears South 16°58'38" East, a distance of 68.26 feet to the beginning of a reverse curve right having a radius of 165.00 feet; thence a distance of 84.71 feet along the arc of said curve through a central angle of 29°24'53" the long chord of which bears South 18°06'54" East, a distance of 83.78 feet; thence tangent to said curve, South 03°24'12" East, a distance of 110.36 feet to a point; thence South 08°03'50" East, a distance of 43.90 feet to the POINT OF BEGINNING.

Excepting Therefrom the following described tracts:

Tract 1

This parcel is situated in the Southeast quarter of Section 31 Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary said Southeast quarter, a distance of 1545.64 feet the TRUE POINT OF BEGINNING; thence North 1°09'00" East, a distance of 175.00 feet; thence East along a line parallel to the said South boundary a distance of 150.00 feet; thence South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence West along said South boundary a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

TRACT 2:

This parcel situated in the Southeast quarter of Section 31 Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary of said Southeast quarter, a distance of 1185.64 feet to the TRUE POINT OF BEGINNING; thence North 1°09'00" East, a distance of 175.00 feet; thence East along a line parallel with said South boundary, a distance of 150.00 feet; thence South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence West along said South boundary a distance of 150.00 feet to the TRUE POINT OF BEGINNING

Tract 3:

This parcel is situated in the Southeast quarter of Section 31, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence East along the South boundary of said Southeast quarter a distance of 975.64 feet to the TRUE POINT OF

EXHIBIT "A"

PROPERTY DESCRIPTION

(Continued)

BEGINNING; thence;

North 1°09'00" East a distance of 175.00 feet; thence

East along a line parallel with the South boundary of said Southeast quarter a distance of 210.00 feet; thence

South 1°09'00" West, a distance of 175.00 feet to a point on said South boundary; thence

West along said South boundary a distance of 210.00 feet to the TRUE POINT OF BEGINNING.

Tract 4:

This parcel is situated in the Southeast quarter of Section 31, Township 3 North, Range 2 West of the Boise Meridian, Canyon County Idaho, and is more particularly described as follows:

Commencing at the Southwest corner of said Southeast quarter; thence

East along the South boundary of said Southeast quarter a distance of 1335.84 feet to the TRUE POINT OF BEGINNING; thence

North 1°09'00" East a distance of 175.00 feet; thence

East along a line parallel with said South boundary, a distance of 210.00 feet; thence

South 1°09'00" West a distance of 175.00 feet to a point on said South boundary; thence

West along said South boundary a distance of 210.00 feet to the TRUE POINT OF BEGINNING.

Tract 5:

A parcel of land being a portion of the South half of the Southeast quarter of Section 31, Township 3 North, Range 2 West, Boise Meridian Canyon County Idaho, more particularly described as follows:

Commencing at the Southeast corner of said South half of the Southeast quarter (section corner common to Sections 31, 32, 5 and 6) said corner monumented with a 3 inch diameter brass disk; thence

South 85°43'44" West a distance of 734.82 feet along the Southerly boundary of said South half of the Southeast quarter to the POINT OF BEGINNING, said point being on the approximate centerline of the Thacker Lateral; thence continuing

South 88°43'44" West a distance of 25.18 feet along the Southerly boundary of said South half of the Southeast quarter to a point on the Westerly right of way of the Thacker Lateral; thence along the Westerly right of way of said Thacker Lateral the following courses and distances: thence

North 08°03'50" West, a distance of 41.94 feet to a point; thence

North 03°24'12" West, a distance of 110.84 feet to a point; thence leaving the Westerly right of way of said Thacker Lateral;

North 71°47'43" West, a distance of 456.37 feet to a point; thence

North 69°10'46" West, a distance of 403.15 feet to a point; thence

North 00°15'32" West, a distance of 581.78 feet to a point; thence

South 72°49'42" East a distance of 2.37 feet to a point; thence

South 64°06'42" East, a distance of 690.84 feet to a point on the approximate centerline of the Thacker Lateral; thence along the approximate centerline of said Thacker Lateral the following courses and distances: thence

EXHIBIT "A"

PROPERTY DESCRIPTION

(Continued)

South 26°25'20" East, a distance of 37.67 feet to a point; thence
South 16°33'03" East, a distance of 179.74 feet to a point; thence
South 22°32'37" East a distance of 126.74 feet to the beginning of a tangent curve right; thence a distance of
96.80 feet along the arc of said curve, having a radius of 260.00 feet, a central angle of 21°19'50", the long
chord of which bears South 11°52'41" East a distance of 96.24 feet to a point; thence tangent to said curve,
South 01°12'46" East, a distance of 64.48 feet to the beginning of a non tangent curve left; thence a distance of
69.14 feet along the arc of said curve having a radius of 125.00 feet, a central angle of 31°41'23", the long chord
of which bears South 16°58'38" East, a distance of 68.26 feet to the beginning of a reverse curve right; thence a
distance of 84.71 feet along the arc of said reverse curve, having a radius of 165.00 feet a central angle of
29°24'53", the long chord of which bears South 18°06'54" East, a distance of 83.78 feet to a point; thence non
tangent to said curve, South 03°24'12" East, a distance of 110.36 feet to a point; thence
South 08°03'50" East a distance of 43.90 feet to the POINT OF BEGINNING.

Tract 6

This parcel of land is a portion of the South half of the Southeast quarter of Section 31, Township 3 North Range
2 West, Boise Meridian, Canyon County Idaho, more particularly described as follows:

Commencing at the Southeast corner of said South half of the Southeast quarter (section corner common to
Sections 31 and 32 in Township 3 North, Range 2 West and Sections 5 and 6 in Township 2 North, Range 2
West), said corner monumented with a 3-inch diameter brass disk; thence
North 00°15'31" West, a distance of 541.80 feet along the Easterly boundary or said South half of the Southeast
quarter to a 5/8 inch diameter iron pin; thence
South 89°44'29" West, a distance of 234.64 feet perpendicular to the Easterly boundary of said South half of the
Southeast quarter to a 5/8 inch diameter iron pin; thence
South 01°41'19" East, a distance of 119.40 feet to a 5/8 inch diameter iron pin; thence
North 73°38'00" West, a distance of 642.74 feet to a point on the Easterly right of way of the Thacker Lateral,
said point monumented with a 5/8 inch diameter iron pin; thence
North 16°33'03" West, a distance of 142.83 feet along the Easterly right of way of said Thacker Lateral to a 5/8
inch diameter iron pin; thence
North 26°25'20" West, a distance of 7.47 feet along the Easterly right of way of said Thacker Lateral to a 5/8 inch
diameter iron pin; thence leaving the Easterly right of way of said Thacker Lateral,
North 64°06'42" West, a distance of 40.89 feet to a point on the centerline of the said Thacker Lateral and being
the POINT OF BEGINNING; thence leaving said centerline of the Thacker Lateral and continuing
North 64°06'42" West a distance of 690.64 feet to a 5/8 inch diameter iron pin; thence
North 72°49'42" West, a distance of 52.13 feet to a 5/8 inch diameter iron pin; thence
North 84°06'56" West, a distance of 343.87 feet to a 5/8 inch diameter iron pin; thence
North 01°00'24" West, a distance of 141.00 feet to a point on the North boundary of said South half of the
Southeast quarter monumented with a 5/8 inch diameter iron pin; thence
North 88°59'36" East, a distance of 739.33 feet along said Northerly boundary of said South half of the
Southeast quarter to a point on the centerline of Thacker Lateral; thence along said centerline the following

EXHIBIT "A"

PROPERTY DESCRIPTION

(Continued)

courses and distances; thence

South 32°04'37" East, a distance of 24.80 feet to a point; thence

South 11°24'29" East, a distance of 49.64 feet to a point; thence

South 06°12'17" East, a distance of 70.71 feet to a point; thence

South 27°58'10" East, a distance of 62.47 feet to a point; thence

South 36°42'51" East, a distance of 75.33 feet to a point; thence

South 40°54'19" East, a distance of 136.58 feet to a point; thence along an arc to the right having a radius of 250.00 feet, a central angle of 14°28'59", the long chord of which bears South 33°39'49" East, a distance of

63.03 feet to a point; thence

South 26°25'20" East, a distance of 106.01 feet to the POINT OF BEGINNING.

Tract 7:

Any portion lying within Royal Ridge at Hunter's Point Planned Unit Development "A Golf Community" recorded in Book 38 of Plats at Page 3, records of Canyon County, Idaho.

(End of Exhibit "A")

2008 APR 24 PM 4 19
WILLIAM H. HURST
CANYON CNTY RECORDER
BY

2008022606

(TS0800468.PFD/TS0800468/17)

Exhibit "A"
Property Description

Stephen J. Gledhill, ISB #2457
Vicky J. Elkin, ISB #5978
Daniel Loras Glynn #5113
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.
225 North 9th Street, Suite 820
P.O. Box 1097, Boise, Idaho 83701

Frederick J. Mack, ISB#1428
Robert A. Faucher, ISB#4745
HOLLAND & HART LLP
101 S. Capitol Blvd, Suite 1400
P.O. Box 2527, Boise, ID 83701-2527

Attorneys for Hopkins Northwest Fund, L.L.C.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HOPKINS NORTHWEST FUND, L.L.C., an
Idaho limited liability company,

Plaintiff,

v.

GREGORY O. BULLOCK and JEANETTE E.
BULLOCK, husband and wife; HUNTER'S
POINT DEVELOPMENT CORPORATION, an
Idaho corporation; HUNTER'S POINT GOLF
COMMUNITY, LLC, an Idaho limited liability
company; LANDSCAPES UNLIMITED, L.L.C.,
a Nebraska limited liability company; LANCO,
INC., an Idaho corporation; RICHARD DINES;
BEUS EXCAVATION, LLC, an Idaho limited
liability company; ADVANCED CONCRETE,
INC., an Idaho corporation; BUILD 4 U, INC., an
Idaho corporation; KMO, INC., an Idaho
corporation; MATZDORFF RESOURCES, LLC,
an Idaho limited liability company, d/b/a Mike's
Sand & Gravel; and THE CITY OF NAMPA,
IDAHO, an Idaho municipality,

Defendants.

AND RELATED COUNTER/CROSS ACTIONS

F I L E D
A.M. 4:30 P.M.
JAN 27 2009 ✓

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Case No. CV 08-1242-C

**CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST
LANDSCAPES UNLIMITED, LLC**

CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST LANDSCAPES UNLIMITED LLC
Filed by: Counterdefendant Hopkins Northwest Fund L.L.C. - 1

COMES NOW the Plaintiff/Counterdefendant, Hopkins Northwest Fund, LLC, by and through its counsel of record, TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A., and hereby moves this Court, pursuant to Rule 56(a) of the Idaho Rules of Civil Procedure, for an order granting partial summary judgment against Defendant/Crossclaimant/Cross-Defendant Landscapes Unlimited, LLC ("LU"), as follows:

Hopkins' Cross-Motion for Partial Summary Judgment, which may be granted by the Court sua sponte, *see Harwood v. Talbert*, 136 Idaho 672, 39 P.3d 612 (2001),¹ or upon Hopkins' own cross-motion and supporting pleadings, seeks entry of Judgment in favor of Hopkins as follows:

1. Judgment declaring LU's Claim of Lien invalid because it fails to substantially comply with statutory requirements for one or more of the following reasons:

a. LU failed to identify the property charged with the lien sufficient for identification and by knowingly and erroneously recording a Claim of Lien on non-golf course property;² and/or

b. LU's blanket lien fails to comply with Idaho Code section 45-508;³ and/or

c. LU's Claim of Lien failed to identify the name of each known owner or reputed owner of golf course property;⁴ and/or

¹ In *Harwood v. Talbert*, *supra*, the Idaho Supreme Court recognized:

a district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court . . . motion(s) for summary judgment allow[] the court to rule on the issues placed before it as a matter of law [and] the moving party runs the risk that the court will find against it.

Id. at 677-78.

² Hopkins Northwest Fund, L.L.C.'s Summ. J. Mem., Filed in Opp. to Landscapes Unlimited, LLC's Mot. for Part. Summ. J. and Filed in Supp. of Hopkins Northwest Fund, L.L.C.'s Cross-Mot. for Part. Summ. J. ("Hopkins LU Summ. J. Mem.") at pp. 19-23, § IV.A.1.

³ *Id.* at pp. 23-26, § IV.A.2.

⁴ *Id.* at pp. 26-27, § IV.B.

d. LU failed to serve each known owner or reputed owner with its Claim of Lien.⁵

2. Even if the Court is not inclined to invalidate LU's Claim of Lien for the above stated reasons, the Court should alternatively enter Judgment in favor of Hopkins as follows:

a. Judgment declaring LU's Claim of Lien postponed to Hopkins' Claim of Lien because LU's Claim of Lien does not comply with Idaho Code section 45-508.⁶

3. Even if the Court is not inclined to invalidate or postpone LU's entire Claim of Lien for the above stated reasons, the Court should alternatively enter Judgment in favor of Hopkins as follows:

a. Judgment declaring LU's Claim of Lien extinguished as to a portion of Parcel 12;⁷

b. Judgment declaring LU's Claim of Lien invalid as to the parcels specifically abandoned by LU in their moving papers including Parcels 4, 5, 6, 8, and 9;⁸ and

c. Judgment declaring LU's Claim of Lien invalid as to the parcels specifically omitted by LU in their moving papers including Parcels 2, 7, 11, 13, and 14.⁹

⁵ *Id.*

⁶ *Id.* at pp. 23-26, § IV.A.2.

⁷ *Id.* at pp. 28-29, § IV.C.1; *see also* Def. Landscapes Unlimited's brief Opposing "Hopkins HP Entities" Motions to Intervene at p. 3 (wherein LU admits "its lien claim is junior to the earlier recorded Schober deed of trust, and was therefore extinguished when the latter was non-judicial foreclosed as a matter of law.").

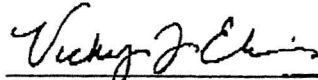
⁸ *Id.* at pp. 30-31, § V.A.

⁹ *Id.* at pp. 31-32, § V.B.

This motion is made and based upon papers and pleadings previously filed and on file herein, and all other and further evidence and arguments presented at the hearing of this matter.

DATED this 27th day of January, 2009.

TROUT • JONES • GLEDHILL • FUHRMAN, P.A.



Vicky J. Elkin

Attorneys for Counterdefendant Hopkins Northwest Fund, L.L.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2009, a true and correct copy of the above and foregoing document was sent in the manner indicated and addressed as follows in the manner stated below:

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Frederick J. Mack
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D. Blair Clark
Ringert Clark, Chtd.
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Attorney for The City of Nampa, Idaho
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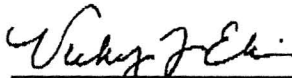
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Vicky J. Elkin

ORIGINAL

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Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorney for Defendant/Cross-Claimant/Cross-Defendant Landscapes Unlimited, LLC

F I L E D

A.M. 7:37 P.M.

FEB 09 2009 ✓

CANYON COUNTY CLERK
M BECK, DEPUTY ✓

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON**

HOPKINS NORTHWEST FUND, L.L.C., an)
Idaho limited liability company,)

Plaintiff,)

vs.)

GREGORY O. BULLOCK and JEANETTE)
E. BULLOCK, husband and wife;))
HUNTER'S POINT DEVELOPMENT)
CORPORATION, an Idaho corporation;))
HUNTER'S POINT GOLF COMMUNITY,))
LLC, an Idaho limited liability company;))
LANDSCAPES UNLIMITED, LLC, a)
Nebraska limited liability company; LANCO,))
INC., an Idaho corporation; RICHARD)
DINES; BEUS EXCAVATION, LLC, an)
Idaho limited liability company;))
ADVANCED CONCRETE, INC., an Idaho)
corporation; BUILD 4 U, INC., an Idaho)
corporation; KMO, INC., an Idaho)
corporation; MATZDORFF RESOURCES,))
LLC, an Idaho limited liability company,))
d/b/a Mike's Sand & Gravel; and the CITY)
OF NAMPA, IDAHO, an Idaho municipality,))

Defendants.)

Case No. CV-08-1242-C

**DEFENDANT LANDSCAPES
UNLIMITED'S REPLY BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT; RESPONSE
TO PLAINTIFF HOPKINS
NORTHWEST FUND'S CROSS-MOTION
FOR SUMMARY JUDGMENT; AND
RESPONSE TO PLAINTIFF HOPKINS
NORTHWEST FUND'S MOTION TO
STRIKE MICHAEL COWAN
AFFIDAVIT**

**DEFENDANT LANDSCAPES UNLIMITED'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT;
RESPONSE TO PLAINTIFF HOPKINS NORTHWEST FUND'S CROSS-MOTION FOR SUMMARY JUDGMENT; AND
RESPONSE TO PLAINTIFF HOPKINS NORTHWEST FUND'S MOTION TO STRIKE MICHAEL COWAN AFFIDAVIT - Page 1**

_____))
AND RELATED COUNTER/CROSS ACTIONS)
_____)

COMES NOW Defendant/Crossclaimant/Cross-Defendant Landscapes Unlimited, LLC ("LU"), by and through its counsel of record, and hereby submits LU's *Reply* Brief in Support of Motion for Summary Judgment; *Response* To Plaintiff Hopkins Northwest Fund's ("Hopkins") Cross-Motion For Summary Judgment; and *Response* To Plaintiff Hopkins Motion To Strike The Affidavit Of Michael Scott Cowan, as follows:

ARGUMENT

LU considers it appropriate to file this single memorandum as its reply brief supporting its motion for partial summary judgment; its response to Hopkins' cross-motion for partial summary judgment; and in response to Hopkins' motion to strike the initial Affidavit of Michael Scott Cowan ("First Cowan Affidavit") and related memorandum. All such motions and briefing relate to the same issues and matters. LU's position supported by the undisputed facts and law is summarized here.

LU again here emphasizes that its seeks to charge only six (6) parcels with its lien claim where LU actually built the Golf Course: **R32082, R32086010, R32072010, R32098010B, R32073** (partial), **R32083014**. Such was clearly stated in LU's opening brief, Point 7, at pages 10-11; and as identified in the First Cowan Affidavit, ¶¶ 10-11, Table at pages 6-7, and supporting maps (Exhibits C-1, C-2, C-3 and I). These six (6) parcels narrow and reduce the parcels LU intends to charge with its lien claim. LU offers to stipulate an appropriate resolution and/or file release of lien claim with regard to the other five (5) parcels included in its original lien claim, which further

**DEFENDANT LANDSCAPES UNLIMITED'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT;
RESPONSE TO PLAINTIFF HOPKINS NORTHWEST FUND'S CROSS-MOTION FOR SUMMARY JUDGMENT; AND
RESPONSE TO PLAINTIFF HOPKINS NORTHWEST FUND'S MOTION TO STRIKE MICHAEL COWAN AFFIDAVIT - Page 2**

investigation has disclosed do not include any portion of the Golf Course.

With respect to four (4) of the six (6) parcels constituting the Golf Course, LU is now entitled to partial summary judgment as to the validity and amount of LU's lien claim, which complies with Idaho statutory lien requirements and case law; and the senior priority of LU's lien claim based on "work commenced" in June 2006, as against Hopkins' lien based on Deeds of Trust Nos. 1 and 2 recorded later on 8/14/06 and 6/20/07. All four (4) of the six (6) parcels have been and are owned by Hunter's Point Golf Community, LLC ("HPGC"). They are described here:

<i>County Real Property Parcel Number:</i>	<i>Golf Course Holes:</i>	<i>Acreage:</i>
R32082 (a/k/a R32082000)	Holes 1-6 + driving range	52.42 Ac.
R32086010	Holes 7, 8, 9	29.23 Ac.
R32098010B	Holes 12, 13, 14	23.08 Ac.
R32083014	Holes 17 and 18	19.82 Ac.

Review of both the First Cowan Affidavit and pertinent portions of the Affidavit of Hope Cheney ("Cheney Affidavit") evidence that there is no dispute, and the parties and affiants agree on the identity, location, and ownership of such four (4) parcels.

In addition, the parties' briefing discloses they also agree on the undisputed facts material to determining the priorities of their respective liens. Specifically, LU first "commenced work" in June 2006, which Hopkins concedes, which is before Hopkins recorded its earliest Deed of Trust No. 1 on 8/14/06 or later Deed of Trust No. 2 on 6/20/07. Under these circumstances, Idaho lien law recognizes the senior priority of LU's lien claim. I.C. § 45-506. There is no factual or legal issue.

As to the remaining two (2) of six (6) parcels comprising the Golf Course, owned by Gregory and Jeanette Bullock ("Bullocks"), R32072010 and R32073 (a/k/a R32073000), recent information

supplied by Hopkins since the suit was filed discloses Hopkins purchased two 2005 deeds of trust given by Bullock to Farmers & Merchants State Bank and has assigned them to Hopkins HP Schmidt in January 2009. As a result, Hopkins HP Schmidt holds a senior priority position (and LU holds a junior priority position) on parcel R32072010 (shown on Exhibit C-1 and C-2 to First Cowan Affidavit; also Cheney Parcel 15). The same is true with respect to a part of parcel R32073, of which Bullock retains ownership currently (yellow shaded portion on Exhibit I to First Cowan Affidavit; also Cheney Parcel 12c).

The other part of parcel R32073 was the subject of a non-judicial foreclosure sale in September 2008 of a 2005 deed of trust given by Bullock to the Schober Family Limited Partnership. This part of parcel R32073 (unshaded portion of Exhibit I map to First Cowan Affidavit; also Cheney Parcel 12) was purchased at the non-judicial foreclosure sale by Hopkins HP Elk Basin, LLC ("Hopkins HP Elk Basin"), which is thus the current owner under a trustee's deed (First Cowan Affidavit, Ex. H (document 1 of 2)). LU here again acknowledges that such non-judicial foreclosure sale extinguished by operation of law its junior lien interest in this part of parcel R32073.

Thus, to recap, LU's lien has senior priority against Hopkins' lien interest on four (4) of the six (6) parcels comprising the Golf Course; a junior interest behind a 2005 deed of trust now held by Hopkins HP Schmidt on one (1) parcel; a junior interest behind another 2005 deed of trust now also held by Hopkins Schmidt on part of one (1) other parcel (yellow shaded portion on Exhibit I to First Cowan Affidavit; also Cheney Parcel 12c); and no interest on the other part of the parcel formerly subject to the Schober Family Limited Partnership, purchased by Hopkins HP Elk Basin at the non-judicial foreclosure sale in September 2008 which was thereby extinguished by operation

of law.

Hopkins' other grounds challenging the validity of LU's lien claim for alleged "insufficient description," "blanket lien," etc., are without merit as discussed below.

The "failure to serve owner" ground does not relate to the four (4) of six (6) parcels where LU has priority, but only to the two (2) of six (6) parcels where LU acknowledges its junior position as discussed above. As to the latter, such argument is not well taken in any event. Although LU named "HPGC" as "owner" and served "Gregory Bullock as Registered Agent," and Bullocks own them individually, they clearly had notice; are not prejudiced; and Bullock signed the Golf Course construction contract as the "owner" or "reputed owner" within the meaning of the Idaho lien law sufficiently to be bound by parcels owned by his limited liability company, HPGC, and/or himself and his wife as individuals.

Therefore LU seeks the Court's order granting partial summary judgment; and has no objection to an Order also granting cross partial summary judgment to Hopkins (or related entities), consistent with the foregoing.

I. HOPKINS' MOTION TO STRIKE AFFIDAVIT OF DEPUTY ASSESSOR MICHAEL SCOTT COWAN SHOULD BE DENIED

LU submits that Hopkins' Motion to Strike the Affidavit of Michael Scott Cowan ("First Cowan Affidavit") is without merit and should be denied in the sound exercise of the Court's discretion. Sufficient foundation and basis for the facts, matters, and opinions supplied are provided in the First Cowan Affidavit.

In addition, LU files herewith the Second Affidavit of Michael Scott Cowan, Deputy Canyon County Assessor ("Second Cowan Affidavit") in response to Hopkins' motion to strike, summary

judgment memorandum, and Cheney Affidavit, supplying his additional testimony. Any alleged “deficiencies” Hopkins asserts relating to the First Cowan Affidavit, which LU denies exist, are clearly cured by the Second Cowan Affidavit.

Hopkins asserts Michael Scott Cowan (“Cowan”) lacks foundation to identify and locate real property because as a mere “appraiser” he lacks knowledge or expertise “to discern from legal descriptions of real property the identification and ownership of lots within the Hunter’s Point Development”; lacks “expertise with regard to the interpretation of legal descriptions”; and fails to provide “temporal scope” for ownership of the subject parcels. Hopkins’ Memorandum In Support of Motion To Strike [First Cowan Affidavit], pp. 2-3. Hopkins asserts Cowan’s expertise is limited to “establish values.” *Id.*, p. 3. Hopkins asserts the First Cowan Affidavit is “riddled with inconsistencies” (*Id.*), while pointing out none and thereby merely engaging in overblown rhetoric. Hopkins asserts Cowan “relies on documents which on their face assert they are not to be utilized for property boundaries or property ownership” (emphasis original)(*Id.*), evidently referring to the “Notice” on the tax assessment records, while failing to fully and fairly note the full deeds with identical legal descriptions establishing ownership also produced and relied on by Cowan. Hopkins’ assertions as to alleged “lack of foundation” for Cowan’s testimony should be rejected *in toto*.

Preliminarily, LU observes that a deputy county assessor such as Cowan must obviously “identify” a specific parcel of real property before he can “appraise” it.

In addition, LU suggests Hopkins construes too narrowly the duties, responsibilities, knowledge, training, education, and computer mapping and other resources available to Cowan in the Offices of Assessor, Treasurer and/or Recorder for Canyon County, as well as Cowan’s specific

experience in such respects. Such matters are described in various detail in the First Cowan Affidavit.

In addition, the Second Cowan Affidavit, ¶ 6, provides an additional statement of qualifications, education, training, experience and expertise. Such will not be repeated here as unnecessary.

In addition, the Second Cowan Affidavit, ¶ 7, provides an additional statement of Cowan's specific knowledge, experience, expertise, and description of official county maps and records relied on, relating to the HPGC and HPDC development project, including both the Golf Course and surrounding residential communities. Such will not be repeated here as unnecessary.

Clearly, Cowan is entitled to rely on and invoke such official records to supply factual information relating to identification, location, and ownership of Golf Course parcels as they relate to LU's lien claim. Indeed, Cheney refers to and relies on much the same information.

Cowan's Second Affidavit, ¶¶ 8-10, also sets forth his disagreement and response to Hopkins' three specific criticisms of his testimony set forth in the First Cowan Affidavit:

Cowan does not rely solely on the tax assessment records attached to the First Cowan Affidavit, Exhibit D, for the legal descriptions of the six (6) parcels where the Golf Course is located as Hopkins suggests. Second Cowan Affidavit, ¶ 8. Cowan also relies on the actual deeds of ownership, which Cowan also produced which are attached to the First Cowan Affidavit, Exs. E-H. Hopkins fails to acknowledge the latter. Hopkins also fails to acknowledge that the tax assessment notices and deeds contain the same legal descriptions for the various parcels and therefore conform to each other. There are no discrepancies. There is no issue. Hopkins raises a red herring.

Hopkins also points out the "Notice" on the tax assessment records (referring to Exhibit D to

the First Cowan Affidavit), which states they are “maintained for assessment purposes, and should not be relied upon for determining property boundaries & current property ownership.” Hopkins Memorandum In Support of Motion To Strike [Cowan Affidavit], p. 5. Cowan acknowledges the “Notice” on the tax assessment records. Second Cowan Affidavit, ¶ 9. Again, the tax assessment records are not the exclusive records Cowan relies on to identify the property and owner; the underlying deeds also evidencing them were also produced. First Cowan Affidavit, Exs. E-H. There is no issue. Hopkins raises another red herring.

Hopkins asserts that a lack of “timing” or “temporal” relationship renders Cowan’s testimony in the First Cowan Affidavit fatally flawed. Hopkins Memorandum To Strike [Cowan Affidavit], Point C, pp. 6-7. However, no material changes in the identification or ownership of the six (6) parcels occurred as established by the original deeds supplied from the time HPGC or Bullock acquired them to the current date which require additional explanation or “temporal reference.” The sole exception is the one parcel which was affected by the non-judicial foreclosure sale, which Cowan did explain in the First Cowan Affidavit and supply the Trustee’s Deed issued in September 2008 so evidencing. First Cowan Affidavit, p. 6, ¶¶ 10 and 11, and Exhibit H (document 1 of 2). Given Hopkins’ assertion, the circumstances and effect of the non-judicial foreclosure sale are again explained by Cowan. Second Cowan Affidavit, ¶ 10. All remaining dates are established by reference to the underlying deeds and lien documents themselves which state the dates on their face as attached to the First Cowan Affidavit. The dates pertinent to LU’s lien claim are stated on the face of the lien claim itself and/or the various Affidavits of Preister, Hutchison, Surls, Bullock also filed in support of LU’s partial summary judgment motion. Hopkins simply ignores these other undisputed

dates established by these produced instruments, documents, and other affidavits.

In view of Hopkins' cross-motion for partial summary judgment on the same issues as LU's motion, LU is entitled to file the Second Cowan Affidavit, which cures any alleged "deficiencies" based on foundation or otherwise asserted by Hopkins, which are thus moot.

Even more importantly, as explained by Cowan in response to Hopkins' assertions against him, Hopkins files the Cheney Affidavit which substantively agrees with the pertinent information supplied regarding the identification, location, ownership, and legal descriptions of the six (6) parcels comprising the Golf Course stated in the First Cowan Affidavit! See Second Cowan Affidavit, pp. 11-14, ¶¶ 11-15. Under these circumstances, Hopkins' efforts to undermine Cowan's qualifications, information and documents presented, or credibility – much less motion to strike the First Cowan Affidavit – are revealed as totally without purpose; a complete waste of time and effort; and an undue burden on the Court and LU and counsel. Such approach is highly questionable. How much more simple, economical, efficient, and candid it would have been if Hopkins agreed up front with the information and documents supplied in the First Cowan Affidavit, instead of moving to strike it, but then supplying the same material information through its own witness, Cheney.

II. UNDISPUTED FACTS OR FACTS CONCEDED BY HOPKINS REGARDING LU'S CONTRACT, WORK, SATISFACTORY WORK, AMOUNT OWED, TIMELINESS OF LIEN AND SUIT, AND CONTRACTOR REGISTRATION COMPLIANCE

Hopkins acknowledges or concedes the facts relating to LU's contract; actual work performed; satisfactory work; principal and interest amounts owed; value of improvements made as equivalent to the amounts owed; having "commenced work" in June 2006; Hopkins' Deed of Trust No. 1 recorded 8/14/2006, and Deed of Trust No. 2 recorded 6/20/07, after LU first "commenced work";

timeliness of lien claim filing; timeliness of lien foreclosure suit filing; and compliance with the Idaho Contractor Registration Act so as to preserve its lien rights. See Hopkins Summary Judgment Memorandum, Point II (A-I), at pages 4-8, acknowledging and/or conceding LU's opening brief's Statement of Undisputed Facts, Points 1-9, at pages 4-14. Given Hopkins' admissions of such undisputed facts, further discussion here is unnecessary.

III. UNDISPUTED FACTS AND LAW ESTABLISHING PRIORITIES AND RIGHTS IN SIX (6) GOLF COURSE PARCELS

As discussed in the Introduction above, the parties agree on the six (6) parcels which comprise the Golf Course where LU did work and asserts its lien claim, as revised by its materials filed in support of its partial summary judgment motion herein. Cowan and Cheney's respective affidavits are in agreement. In addition, the parties are in agreement with the priorities (or undisputed facts which govern determination of their lien priorities) on the six (6) parcels. Such facts are summarized here. Such matters are recapped in the Second Cowan Affidavit, pp. 11-14, ¶¶ 11-15, which also cross-references Cheney's Affidavit, thus evidencing both parties' affiants' identical conclusions which are in agreement.

Hopkins also acknowledges and/or concedes that the six (6) parcels of real property identified by LU in the First Cowan Affidavit are in fact where the Golf Course is located; that **four (4) parcels** were and are owned by Hunter's Point Golf Community, LLC ("HPGC") as the record title owner; that the **5th parcel** was and is owned by Gregory and Jeanette Bullock ("Bullocks"); and that the remaining **6th parcel** remains partly owned by Bullocks, but now partly owned by Hopkins HP Elk Basin, LLC ("HP Elk Basin") due to purchase at the September 2008 non-judicial foreclosure sale.

Second Cowan Affidavit, pp. 11-15, ¶¶ 13-15 (citing cross-references to Cheney Affidavit).

Regarding priorities existing on the six (6) total parcels, there also appears to be agreement between the parties which is summarized here:

With respect to the **four (4) parcels** of real property, **R32082**,¹ **R3206010**, **R32098010B**, and **R32083014**, owned by HPGC, the parties agree on the following key facts: LU first “commenced work” before Hopkins recorded its earliest First Deed of Trust on 8/14/06. Thus, if LU’s lien claim is valid on these four (4) parcels, then LU’s lien claim has senior priority over Hopkins’ later filed First (and Second) Deeds of Trust, pursuant to I.C. § 45-506.

With respect to the **5th parcel** of real property, **R32072010** is owned by Bullocks. New information supplied by Hopkins since the suit was filed indicates another 2005 Deed of Trust was given by Bullocks to Farmers & Merchants State Bank, which has since been acquired by Bank of the Cascades, which sold it to Hopkins, which in turn assigned it to Hopkins HP Schmidt, LLC (“Hopkins HP Schmidt”), its wholly-owned subsidiary.² Where Hopkins HP Schmidt is thus now the holder of the 2005 Deed of Trust, which pre-dates the date LU first “commenced work” in June 2006, then LU does here acknowledge that its lien claim is junior to such Deed of Trust under I.C. § 45-506. LU thus agrees with Hopkins’ position to the same effect. See Hopkins Memorandum, p. 17, ¶ 29. This parcel **R32072010** is identified on Cowan’s Exhibits C-1 and C-2 maps; and also identified as Cheney’s **Parcel 15 (red)** on the Exhibit B and F maps to the Cheney Affidavit. Both Cowan and

¹R32082 is also sometimes listed as R32082000 (sometimes the last three zeros are dropped on the official County Assessor’s maps).

²The steps leading to Hopkins HP Schmidt being the current holder of this 2005 deed of trust relating to this parcel is evidenced by its Motion To Intervene, which LU does not dispute.

Cheney identify the same parcel and agree with this identification and location.

With respect to the **6th parcel** of real property, **R32073** (a/k/a R32073000), at the time LU did its work and filed its lien claim, this entire parcel was owned by Bullocks who acquired it in 2005. Since this suit was filed, the ownership interest has become divided by a non-judicial foreclosure sale affecting part of the property, which occurred in September 2008.

Specifically, part of **R32073** was subject to a 2005 Deed of Trust held by the Schober Family Limited Partnership. The Schober Deed of Trust was non-judicially foreclosed in September 2008. Hopkins HP Elk Basin was the purchaser at the non-judicial foreclosure sale and received a Trustee's Deed. LU acknowledges and agrees that its lien claim interest as to that part of parcel **R32073** covered by the Trustee's Deed was extinguished by the non-judicial foreclosure thereon. I.C. § 45-1508. Thus LU agrees with Hopkins' position to the same effect. See Hopkins Memorandum, p. 17, ¶ 27. As to this part of **R32073**, LU acknowledges it has no current valid lien interest. This part of **R32073** is the unshaded area enclosed by the pink lines on Cowan's Exhibit I map; and also identified as Cheney's **Parcel 12 (blue)** on her Exhibit F and G maps. Both Cowan and Cheney identify the same parcel and and agree with this identification and location.

Ownership of the other part of **R32073** not covered by the non-judicial foreclosure sale of the Schober Deed of Trust is retained by Bullock. New information supplied by Hopkins since the suit was filed indicates another 2005 Deed of Trust was given by Bullocks to Farmers and Merchants Bank. Farmers and Merchants Bank has since been acquired by Bank of the Cascades, which has sold this 2005 Deed of Trust to Hopkins, which has assigned it to Hopkins HP Elk Basin, LLC ("Hopkins HP Elk Basin"). Where Hopkins HP Elk Basin is thus now the holder of the 2005 Deed of Trust,

which pre-dates the date LU first “commenced work” in June 2006, then LU here also acknowledges that its lien claim is junior to such Deed of Trust under I.C. § 45-506. LU thus agrees with Hopkins’ position to the same effect. See Hopkins’ Memorandum, p. 17, ¶ 28. This parcel is identically identified by Cowan and Cheney. This part of **R32073** is the **yellow shaded area** on Cowan’s Exhibit I map; and also identified as Cheney’s **Parcel 12c (blue cross-hatched)** on her Exhibit F and G maps. Both Cowan and Cheney identify the same parcel and and agree with this identification and location.

In summary, the identification and location of the six (6) parcels where the golf course is located, which is subject to LU’s lien claim, and related facts which determine priorities for such parcels, are undisputed and agreed, as evidenced by Cowan’s and Cheney’s Affidavits. Their mutual agreement is evidenced by the analysis set forth in the Second Cowan Affidavit, pp. 11-14, ¶¶ 11-15. The governing law determining such priorities is also well established based on the date LU first “commenced work” versus when the deeds of trust relied on by Hopkins were recorded. I.C. § 45-506. With the exception of the part of the **6th parcel, R32073**, which was the subject of the non-judicial foreclosure sale, the Court should so rule in granting LU’s motion for partial summary judgment in accordance with the above discussion and reiterated for clarity in the Conclusion below.

IV. LU’S LIEN CLAIM COMPLIES WITH ALL STATUTORY REQUIREMENTS AND IS NOT INVALID BY REASON OF THE “MISCELLANEOUS” GROUNDS RAISED BY HOPKINS

Evidently as part of its “kitchen sink” strategy, Hopkins raises several additional “miscellaneous grounds” upon which it urges the Court to rule LU’s lien claim is invalid as allegedly “failing to comply with statutory requirements.” They include: alleged failure to provide “sufficient

identification” of the property subject to the lien; erroneously filing a lien including too much property, i.e., non-golf course property (which is acknowledged by LU’s motion for partial summary judgment and Cowan’s Affidavit); filing an alleged “blanket lien”; and alleged failure to identify and serve each known owner/reputed owner of the subject property. LU disagrees that such circumstances exist and/or that Idaho law supports “invalidating” LU’s lien claim on such grounds. Indeed, to the contrary, Idaho law specifically rejects such grounds to invalidate an otherwise valid lien. LU urges the Court to follow well-settled precedent and order likewise.

A. LU’s Lien Claim Contains A “Sufficient Description” Of Real Property Sought To Be Charged

Hopkins contends that LU’s claim of lien is ambiguous and therefore fails to sufficiently describe the property charged as required by I.C. § 45-507. In challenging the sufficiency of description, the standard is substantial compliance in good faith. The provisions of the lien statutes must be liberally construed in favor of the claimant with the view to effect their object and promote justice. *L. N. Turnboo v. Keele*, 86 Idaho 101, 383 P.2d 591 (1963) (citing *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936)). The description of the property to be charged with the lien is required to be only such as will be “sufficient for identification.” If there appears enough in a description to enable a party familiar with the locality to identify the premises intended to be described with reasonable certainty, to the exclusion of others, it will be sufficient. *Turnboo, supra*, 86 Idaho at 105, 386 P.2d at 593. Unless a description is such as to mislead the owner, any mere lack of accuracy is not available as a defense. *Great Plains Equipment, Inc. v. Northwest Pipeline Corporation*, 132 Idaho 754, 979 P.2d 627 (1999) (quoting *Turnboo v. Keele*, 86 Idaho at 106, 383

P.2d at 594). The fact that a description could have been more precise does not take it out of substantial compliance with I.C. § 45-507. *Treasure Valley Plumbing and Heating, Inc. v. Earth Resources Company*, 106 Idaho 920, 684 P.2d 322 (1984) (quoting *Turnboo v. Keele, Supra*).

The claim of lien filed by LU describes the property to be charged with the lien in three ways: (1) the property is identified by specific parcel numbers that were provided by the Canyon County Assessor's Office; (2) maps were attached to the claim of lien specifically identifying the property associated with each of the parcel numbers; and (3) specific legal descriptions were attached for each parcel number. In addition, the claim of lien specifically indicates that LU performed labor and provided materials for construction of a golf course on the subject property. There is only one golf course that anyone familiar with the property can easily identify.

There is no contention by Hopkins, or anyone else interested in the properties, that they were mislead as to the property subject to LU's claim of lien. The claim of lien contains a sufficient description to enable a party familiar with the locality to identify the premises with reasonable certainty and Hopkins' argument to the contrary should be rejected. There is surely no prejudice to Hopkins, which is a lender, not the owner, and has not altered its position by reason of LU's claim of lien filed.

B. Filing A Lien Against *Too Much* Property Does Not Provide A Basis To Invalidate A Lien Claim

Hopkins argues that LU's claim of lien is invalid because it describes some non-golf course property. The fact that the notice of the claim of lien or claim or statement describes or includes more property than the party is entitled to claim a lien on does not invalidate nor defeat the lien as to the land or property properly subject thereto. *White v. Constitution Mining and Milling Company*, 56

Idaho 403; 55 P.2d 152 (1936). If there is no fraudulent intent and no one is injured thereby, it is for the court to determine, after hearing all the evidence in the case, what portion of the property shall be subject to the lien. *White*, supra at 419. In *White*, the claim of lien described 23 unpatented mining claims and 21 patented mining claims that were all on one unit and adjacent to each other. The work was performed only on the patented mining claims. The claimants conceded that their lien should be fixed only against the patented mining claims. The court held "it does not appear that there was any fraudulent intent, nor that anyone was injured due to the fact that the lien claims may have included more property than necessary or property other than that actually subject to the lien." *White*, supra, at 419, 55 P.2d at 159. The same is true in the instant case.

LU concedes that its claim of lien describes some property that is adjacent to the golf course upon which it did not perform any work. (See maps attached to Affidavit of Michael Scott Cowan and Hope Cheney).

There is no allegation, however, that LU filed its claim of lien with any fraudulent intent or that anyone was injured thereby. This is especially true since LU concedes that its lien is limited to the six parcels upon which it performed work. Accordingly, the inclusion of additional property in the claim of lien does not invalidate the lien on the property on which work was actually performed.

C. LU Did *Not* File An Invalid "Blanket Lien"

Hopkins suggests that LU's lien is invalid since only one lien was filed covering the entire golf course project rather than separate liens for each separate parcel of property on which work was performed.

A single lien claim may be made where labor and materials are supplied to different buildings

under a single contract. *Phillips v. Salmon River Company*, 9 Idaho 149, 72 P. 886 (1903). In *Phillips*, the Idaho Supreme Court recognized that a lien was not rendered ineffective against mining property for failure to distinguish among several mining claims where work was performed at the "mining project." The court stated "it would exalt form over substance to hold that a notice of claim must describe with particularity each and every building, or other form of improvement where plumbing work was performed at a mining project. This type of particularity might be appropriate in fashioning a lien foreclosure decree... but we decline to mandate such precision in the notice of claim." See also, *Treasure Valley Plumbing and Heating, Inc. v. Earth Resources Company*, 106 Idaho 920, 684 P.2d 322 (Id. App. 1984).

Likewise, in *Idaho Min. and Mill Company v. Davis*, 123 F. 396 (9th Cir. 1930), the Ninth Circuit Court of Appeals in affirming the District Court found that under Idaho Code § 45-508... where several claims or locations are owned and operated as one mine, as against the parties so uniting them, they may, for the purpose of the lien law, be regarded and treated as a single claim, and declared as such. 123 F. at 399 (citing *Hamilton v. Delhi Min. Co.*, 118 Cal. 148, 151, 50 Pac. 378; *Post v. Fleming, et al.*, 62 Pac. 1087 (N.M.); and *Maynard v. Ivey*, 21 Nev. 241, 29 Pac. 1090).

LU entered into one contract for construction of an entire 18 hole golf course project. Accordingly, one claim of lien covering that project is sufficient. The lien law does not require LU to break down what work was done on each of the individual holes of the entire 18 hole golf course project. Such would be absurd and is not required by Idaho lien law. Hopkins' hypertechnical over-reading of the lien law should be rejected.

D. LUNamed “HPGC” and Served “Gregory Bullock, Registered Agent,” Which Is Sufficient Naming and Service of the “Owner or Reputed Owner” and Constitutes Substantial Compliance

Hopkins asserts that LU’s failure to name “Gregory and Jeanette Bullock” individually as owners of two (2) of the six (6) parcels comprising the Golf Course renders LU’s lien claim invalid on these parcels. LU disagrees.

Preliminarily, LU emphasizes Hopkins’ assertion does not apply to four (4) of the six (6) parcels which are owned by HPGC. Hopkins evidently concedes HPGC was properly named and served. They comprise 14 of 18 golf holes plus the driving range of the Golf Course.

Hopkins’ assertion thus applies only to two (2) of six (6) parcels which Bullocks owned at the time LU performed the golf course construction contract and filed its lien claim. They include one-half of golf hole 10, golf hole 11, and 95% of golf hole 15. Bullock continues to own one of these parcels. Bullock continues to own part of the other parcel. The other part of the latter parcel is owned by Hopkins HP Elk Basin as purchaser at the non-judicial disclosure sale. The prior and current ownership has been discussed above. See also, Second Cowan Affidavit, , p.12-13, ¶ 13 (4th and 5th bullet items). As to the one parcel still owned by Bullocks, and the part of the other parcel still owned by Bullocks, LU acknowledges a junior position behind the 2005 deeds of trust to Farmers & Merchant State Bank which are now held by Hopkins HP Schmidt. As to the other part of the latter parcel, LU acknowledges its lien claim was extinguished by the non-judicial foreclosure sale.

Idaho Code § 45-507 provides that a copy of the lien shall be served on the owner or reputed owner of the property by delivering a copy to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address.

A substantial compliance in good faith meets the statutory requirement for naming the owner or reputed owner. *Layrite Prods. Co. v. Lux*, 86 Idaho 477, 388 P.2d 105 (1964). Thus the failure in *Layrite Products* by the claimant to name the wife as well as the husband in its claim did not invalidate its lien against community property.

Where work was done on a group of placer mining claims owned by the same person and commonly known under the same name, a description of claims under such common name, together with a description of place of location, is sufficient in a notice of a lien. *Phillips v. Salmon River Mining & Dev. Co.*, 9 Idaho 149, 72 P. 886 (1903).

It is undisputed that LU's lien claim identifies as owner "Hunter's Point Golf Community, LLC, an Idaho limited liability company." See LU Claim of Lien. It does not specifically name "Gregory and Jeanette Bullock" as individuals. LU submits such is not fatal under the statutes and case law cited above.

It is also undisputed that LU's lien claim was actually served by certified mail, return receipt requested, addressed as follows:

Hunter's Point Golf Community, LLC, an Idaho limited liability company
c/o Gregory O. Bullock, Registered Agent
504 Bayhill Drive
Nampa, Idaho 83686

It is also undisputed that such Notice was actually personally delivered to and signed for by "Greg Bullock" on October 1, 2007. Preister Affidavit, Ex. H.

It is also undisputed that Gregory Bullock signed the LU-HPGC Contract for construction of the Golf Course on the signature line above which was printed "Owner." *Id.*, Ex. A, p. 16. It is also undisputed that Gregory Bullock is either the "owner," as principal in HPGC, or the "agent of the

owner,” as contemplated by I.C. § 45-501.

Regardless of the capacity in which he received the notice, it is undisputed that Bullock received a copy of the claim of lien putting him on actual notice of LU’s claim. Providing another notice to Bullock would not provide any better notice than the notice he received. Hopkins overlooks the “reputed owner” express language of the statute.

Clearly, HPGC and/or Bullock are the “owner or reputed owner” of the all six (6) parcels of real property comprising the Golf Course which LU charges with its lien claim under I.C. § 45-501 and case law cited above.

Under these circumstances, LU’s lien claim naming only “HPGC,” and serving Gregory Bullock, “as Registered Agent,” must be deemed substantial compliance with Idaho lien law such as to also charge the two (2) of six (6) parcels owned by Gregory and Jeannette Bullock, individually, with LU’s lien claim for purposes of the Idaho lien law.

Hopkins in effect urges the Court to exalt form over substance; ignore the “substantial compliance” rule; ignore the actual notice Bullock received as an individual; ignore Bullock is the principal in HPGC and its “agent” for all purposes in contracting or dealing with LU; ignore LU’s lien claim’s identification of all six (6) parcels comprising the Golf Course as the real property LU intended to charge with its lien; and ignore the well established rule that mechanic’s lien statutes are to be liberally construed so as to effect their objects and to promote justice. Hopkins’ assertion is contrary to Idaho lien law and should be rejected.

V. LU OFFERS TO FILE A PARTIAL RELEASE OF LIEN TO NON-GOLF COURSE PROPERTY WHERE IT DID NO WORK AND INTENDS TO ASSERT NO LIEN; ALSO TO FILE A PARTIAL RELEASE OF LIEN ON THE HOPKINS HP ELK BASIN PARCEL WHICH HAS BEEN EXTINGUISHED BY OPERATION OF LAW; ALSO TO STIPULATE TO A JUNIOR POSITION ON THE TWO (2) HOPKINS HP SCHMIDT PARCELS

Given the complexity of the overall development, multiple parcels involved, golf course portion, surrounding multiple residential developments, etc., it has definitely been a significant and challenging undertaking requiring substantial time and effort to sort out the specific parcels comprising only the Golf Course and determine the relative priorities of the parties' respective claims in this action.

Presumably, the difficulty and challenge is readily apparent from reviewing the First and Second Cowan Affidavits, Cheney Affidavit, and many deeds, deeds of trust, maps, and other instruments involved in this litigation, which the Court can no doubt also appreciate given the voluminous briefing and materials submitted by all parties on their motions and cross-motions for summary judgment.

Having now done so, LU agrees it is appropriate as a "housekeeping" matter to "clean up" the case and the record title in accordance with its evaluation and conclusions articulated above.

Thus, LU hereby offers to file a partial release of lien on the five (5) parcels included in its original lien claim which have since been determined non-golf course property where LU did no work and therefore never intended to assert a lien claim. Hopkins refers to these as "abandoned" parcels or other similar designation. LU has promptly acknowledged and sought to narrow and limit its lien claim solely to the six (6) parcels which comprise the Golf Course, and which has now been

determined as a result of further investigation and discovery done since its lien claim and the suit were filed. See LU opening brief, Point 7, pp. 10-11.

As discussed above, LU also acknowledges that its lien claim is a junior position on the two parcels which were and are still owned by Bullock, and on which Hopkins HP Schmidt now holds the two deeds of trust given by Bullock in 2005 to Farmers & Merchant State Bank. Clearly, these deeds of trust predate when LU first “commenced work” in June 2006. LU’s lien claim is thus junior to Hopkins HP Schmidt’s lien interest in those two parcels. They are parcel R32072010 (a/k/a Cheney Parcel 15); and part of parcel R32073 (yellow shaded portion on Ex. I to First Cowan Affidavit)(a/k/a Cheney Parcel 12c).

As discussed above, LU also acknowledges its lien claim on the part of parcel R32073 formerly subject to the Schober Family Limited Partnership’s deed of trust, which was non-judicially foreclosed, and which Hopkins HP Elk Basin purchased at the foreclosure sale in September 2008, has been extinguished by operation of law. I.C. § 45-1508. This is part of parcel R32073 (unshaded portion enclosed within the pink lines of Ex I to First Cowan Affidavit)(a/k/a Cheney Parcel 12).

LU is amenable to a partial release of lien and/or stipulation for partial summary judgment in accordance with the above evaluation of its interests to resolve such issues as the Court and other affected parties may deem appropriate.

CONCLUSION

LU respectfully seeks the Court’s ruling granting partial summary judgment affirming the validity and amount of its lien claim in the sum of \$1,337,637.00 principal, together with accrued interest thereon at the 12% statutory rate, plus costs and attorney fees to be determined in subsequent

proceedings.


In addition, LU seeks the Court's ruling finding its lien claims having a senior priority against Hopkins with respect to four (4) of six (6) parcels comprising the Golf Course, namely, parcels **R32082**, **R3206010**, **R32098010B**, and **R32083014**, all of which are owned by HPGC. As to such parcels, LU's lien claim is "senior" because it first "commenced work" in early June 2006, which was before Hopkins recorded its earliest Deed of Trust No. 1 on 8/14/06 (or later Deed of Trust No. 2 on 6/20/07). As such, LU's lien claim is a "preferred lien" thereon. I.C. § 45-506.

In addition, LU agrees that the facts and law also support the Court's ruling finding that LU's lien claim is junior to Hopkins HP Schmidt as the current holder of the two deeds of trust issued in 2005 to Farmers & Merchant State Bank, with respect to parcel **R32072010** (a/k/a Cheney Parcel 15); and part of parcel **R32073** (yellow shaded portion on Ex. I to First Cowan Affidavit)(a/k/a Cheney Parcel 12c), both owned by Bullocks.

In addition, LU agrees that the facts and law support the Court's ruling finding that its lien claim was extinguished on that part of parcel **R32073** now owned by Hopkins HP Elk Basin as purchaser at the non-judicial foreclosure sale in September 2008.

DATED this 6th day of February, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Defendant/Crossclaimant/Cross-
Defendant Landscapes Unlimited, L.L.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of February, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) by U.S. Mail postage prepaid:

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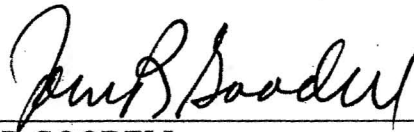
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